

STATE OF MARYLAND

* IN THE

* CIRCUIT COURT

v.

* FOR

EDWARD NERO

* BALTIMORE CITY

Defendant.

* CASE NO. 115141033

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

Defendant, Edward Nero, 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 Edward Nero, 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.

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.

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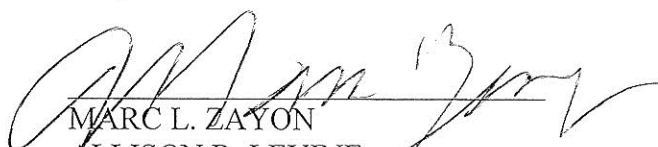
CRIMINAL DIVISION

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 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.

6. MD. RULE 5-402 states that “evidence that is not relevant is not admissible.” MD. 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 probable or less probable than it would be without the evidence.” “Even reliable evidence is admissible only if it is relevant in the particular case, *i.e.*, if it has a tendency to make the existence of a fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *State v. Smullen*, 380 Md. 233, 268 (2004). The probative value of the evidence pertaining to the nature and extent of Mr. Gray’s injuries, including any opinion as to the cause of death, and any opinion as to the manner of death, is substantially outweighed by the danger of unfair prejudice.

WHEREFORE, Defendant Edward Nero, by undersigned counsel, hereby requests that this Honorable Court GRANT this Motion *in Limine* to Preclude Introduction of Evidence, or Argument, of Mr. Gray’s Injuries.

Respectfully Submitted,



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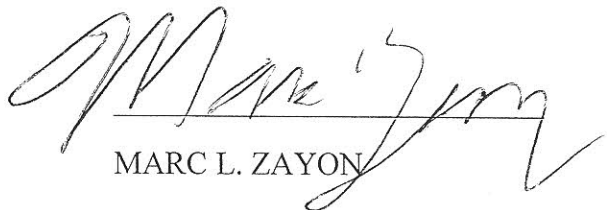
ORDER

Upon consideration of the Defendant's Motion *in Limine* to Preclude Introduction of Evidence, or Argument, of Mr. Gray's Injuries, it is this ____ day of _____, 2016 hereby **ORDERED** that the Defendant's Motion is **GRANTED**.

Judge

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on the 1 day of February 2016, a copy of the foregoing Motion was hand-delivered to Janice Bledsoe, Deputy State's Attorney for Baltimore City, 120 E. Baltimore Street, 9th Floor, Baltimore, Maryland 21202.


MARC L. ZAYON