

STATE OF MARYLAND

* IN THE

* CIRCUIT COURT

v.

* FOR

OFFICER EDWARD NERO

* BALTIMORE CITY

* Case No.: 115141033

* * * * *

MOTION IN LIMINE PRECLUDE REFERENCE TO OR ARGUMENT ABOUT MR. FREDDIE GRAY'S INITIAL DETENTION NOT BEING SUPPORTED BY REASONABLE SUSPICION, MR. GRAY'S ARREST NOT BEING SUPPORTED BY PROBABLE CAUSE, OR MR. GRAY'S SEIZURE NOT BEING OTHERWISE LEGALLY JUSTIFIED

Defendant, Officer Edward Nero, by undersigned counsel, pursuant to Maryland Rule 5-609, files this Motion in Limine to order the preclusion of any and all reference to or argument about Mr. Freddie Gray's initial detention not being supported by reasonable suspicion, Mr. Gray's arrest not being supported by probable cause, or Mr. Gray's seizure not being otherwise legally justified. In support, Defendant states the following:

The State seeks to introduce evidence and testimony and make arguments as to the legality of Mr. Freddie Gray's initial detention and/or arrest on April 12, 2015. The State may also seek to make reference to or argue about whether reasonable suspicion supporting that initial detention existed, whether and what probable cause existed, and the overall legality of Mr. Gray's seizure by law enforcement. Because Defendant Officer Nero had legal authority to seize Mr. Gray throughout the encounter on April 12, 2015, the State should be precluded from arguing or attempting to submit evidence to indicate otherwise, as such argument or evidence would not be relevant and would be substantially more prejudicial than probative.

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Legal Standard

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). Moreover, MD. RULE 5-403 states that “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

Facts

On April, 12, 2015, Defendant Officer Edward Nero of the Baltimore Police Department was on bike patrol with Lt. Brian Rice and Officer Garrett Miller. As the three traveled, between 8:45 and 9:15 a.m., Lt. Rice made eye contact with Freddie Carlos Gray Jr. near the corner of North Avenue and Mount Street.

After making eye contact with Lt. Rice, a uniformed police officer, Mr. Gray began to run. Lt. Rice then dispatched over departmental radio that he was involved in a foot pursuit at which time Officer Miller and Defendant Officer Nero began to pursue Mr. Gray. Mr. Gray subsequently surrendered to Officers Miller and Nero in the vicinity in the 1700 block of Presbury Street.

Officer Miller then handcuffed Mr. Gray and moved him to a location a few feet away from his surrendering location, as Defendant Officer Nero went to retrieve the two officer's

bikes. Mr. Gray was then placed in a prone position with his arms handcuffed behind his back. Officer Miller then placed Mr. Gray in a seated position and found a knife clipped to the inside of his pants pocket. The knife was found by Officer Miller to be a spring-assisted, one hand operated knife. The knife was then removed and placed on the sidewalk.

Mr. Gray was then placed back down on his stomach at which time Mr. Gray began to flail his legs and scream as Officer Miller placed Mr. Gray in a restraining technique known as a leg lace while Officer Nero physically held Mr. Gray down until the Baltimore Police Department transport wagon arrived to transport Mr. Gray.

I. The State Should be Precluded from Introduction of Evidence and Testimony or Making Arguments as to the Legality of Mr. Freddie Gray's Initial Detention Against Defendant Officer Nero

The initial pursuit and detention of Mr. Gray was lawful, as supported by *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000), *Terry v. Ohio*, 392 U.S. 1 (1968), *In re David S.*, 367 Md. 523 (2002), and their progeny. After making eye contact with Lt. Rice, a uniformed police officer, Mr. Gray took flight. After a brief foot pursuit, Mr. Gray surrendered in the vicinity of the 1700 block of Presbury Street. Mr. Gray's flight at the sight of a uniformed officer was unprovoked. The State cannot ethically or in good faith claim that the area from which Mr. Gray fled, the corner of North Avenue and Mount Street, was not a high crime area. Therefore, the initial detention of Mr. Gray constituted a valid *Wardlow* stop.

As an initial note, "a police officer's conduct should be judged not by hindsight but should be viewed in light of how a reasonably prudent officer would respond faced with the same difficult emergency situation." *Richardson v. McGriff*, 361 Md. 437, 453 (2000) (quoting *Boyer v. State*, 323 Md. 558, 589 (1991)). The officer "is the person who has to evaluate the potential seriousness of the [situation] and determine an appropriate response, the only caveat

