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CIRCUIT COURT
BALTIMORE CITY
CRIMINAL DIVISION

STATE OF MARYLAND

* IN THE

v.

* CIRCUIT COURT

OFFICER EDWARD NERO

* FOR

Defendant

* BALTIMORE CITY

* CASE NO. 115141033

* * * * *

**REPLY TO STATE’S RESPONSE TO DEFENDANT’S
MOTION TO DISMISS FOR FAILURE TO CHARGE A CRIME**

Defendant Officer Edward Nero, by undersigned counsel, hereby submits this Reply to the State’s Response to Defendant’s Motion to Dismiss for Failure to Charge a Crime. In support thereof, Defendant states the following:

INTRODUCTION

The State’s Reply to the Defendant’s Motion to Dismiss for Failure to Charge a Crime distorts the appropriate standard of review. More importantly, it overlooks every case in this country holding that the failure of a police officer to seatbelt an arrestee, even when handcuffed and leg-shackled, does not constitute criminal recklessness. The State provides no legal authority to support the conclusion that such an allegation constitutes a criminal act. This void is because no such authority exists, and the allegation is simply not a crime.

In order to survive the present Rule 4-252(d) motion to dismiss, the State has the burden of demonstrating that: (1) the Defendant had a legal duty to seatbelt Mr. Gray, and (2) the failure to fulfill that duty renders the Defendant liable under Maryland’s reckless endangerment statute. *State v. Kanavy*, 416 Md. 1 (2010). The State has failed to meet this burden.

There are three potential sources from which the State could argue that the Defendant had a legal duty to seatbelt Mr. Gray. First, the State could argue that the Defendant had a duty to

