STATE OF MARYLAND	*	IN THE
	*	CIRCUIT COURT FOR
v.	*	BALTIMORE CITY
	*	
EDWARD NERO	*	CASE No. 115141033
	*	(Filed under seal)

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STATE'S MOTION *IN LIMINE* REGARDING THE DEFENDANT'S PROPOSED EXPERT TESTIMONY AND REQUEST FOR HEARING

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City; Michael Schatzow, Chief Deputy State's Attorney for Baltimore City; Janice L. Bledsoe, Deputy State's Attorney for Baltimore City; and Matthew Pillion, Assistant State's Attorney for Baltimore City; and pursuant to Rule 4-252, Rule 4-263, Rule 5-702, and Rule 5-705 respectfully moves this Court *in limine* to issue a pretrial order regarding the Defendant's proposed expert testimony (1) to bar expert witnesses from testifying to opinions that are contrary to Maryland law or that are not appropriately helpful to the jury, particularly opinions that police departmental policies may not form the basis of a criminal prosecution, opinions tantamount to jury instructions about the law, and opinions constituting legal conclusions about the Defendant's compliance with the law; (2) to require the disclosure of the facts or data underlying the Defendant's expert witnesses' opinions before those experts are permitted to testify to those opinions; (3) to preclude the Defendant from calling any expert witness about whom the Defendant has not provided a disclosure complying with Rule 4-263. In support of this Motion, the State submits the following:

1. The Defendant has recently disclosed that he intends to call a number of expert witnesses to testify as part of his defense. As relevant here, he has identified as such witnesses the following persons: (1) Detective William Boyd, (2) Detective Charles Anderson, (3) Detective Syreeta Teel, (4) Officer Zachary Novak, (5) Officer Mark

Gladhill, (6) Officer Matthew Wood, (7) Lieutenant Robert Quick, (8) Captain Justin Reynolds, (9) Colonel Stanley Branford, (10) Detective Dawnyell Taylor, (11) Sergeant Tashawna Gaines, (12) Timothy Longo, (13) John Ryan (14) Officer Joshua Rosenblatt, and (15) Professor Byron Warnken. Def. Discovery Disclosures at 11-28.

2. Rule 5-702 only permits expert testimony to be admitted to "assist the trier of fact to understand the evidence or to determine a fact in issue," with the Court being required to consider before allowing such testimony "whether the witness is qualified as an expert by knowledge, skill, experience, training, or education," "the appropriateness of the expert testimony on the particular subject" and "whether a sufficient factual basis exists to support the expert testimony."

3. Moreover, "[g]enerally, witnesses cannot provide testimony presenting a legal conclusion," and this includes testimony "to a matter of law," testimony about the expert's "understanding of Maryland law or an explication as to what Maryland law requires," and testimony that "appl[ies] any law to the facts of [the] case." *Randall v. State*, 223 Md. App. 519, 576-77 (2015). As the Court of Appeals has firmly established:

> [W]herever opinion testimony is proper, the witness may express his opinion either as to the possibility, probability, or actuality of the matter of fact about which he is interrogated and the answer will not be an invasion or usurpation of the function of the jury, even though it passes upon an ultimate fact which the jury must determine. But this does not mean that the witness may in the guise of opinion upon a matter of fact include in it a matter of law or the application of a rule of law to the facts. [...] No witness should be permitted to give his opinion directly that a person is guilty or innocent . . . or that a person was negligent or not negligent or that he had capacity to execute a will or deed or like instrument or respecting whether a county attorney had probable cause to believe the plaintiff was guilty of the crime charged. But the reason is that such matters are not subjects of opinion testimony. They are mixed questions of law and fact. When a standard or a measure or a capacity has been fixed by law, no witness whether expert or nonexpert, nor however

> qualified, is permitted to express an opinion as to whether or not the person or conduct in question measures up to that standard. On that question the Court must instruct the jury as to the law, and the jury must draw its own conclusions from the evidence.

Franceschina v. Hope, 267 Md. 632, 643 (1973) (quoting Edmund M. Morgan, *Basic Problems of Evidence* at 218 (1962)) (internal quotation marks removed).

4. Here, the Defendant has proffered that many of his proposed expert witnesses, particularly Officer Rosenblatt and Professor Warnken, will offer extensive testimony and opinions about the substance and holdings of Fourth Amendment jurisprudence, about Officer's Nero's compliance with that jurisprudence, and about other conclusions of law. For example, the Defendant proposes to call Officer Rosenblatt to "testify regarding reasonable articulable suspicion, probable cause, and how those legal concepts apply to the facts in this case," and to opine "that the knife recovered from Mr. Gray is unlawful pursuant to the Baltimore City Code." Def. Discovery Disclosures at 13-14. Likewise, he intends to call Professor Warnken to "testify that the use of handcuffs does not cause a detention to rise to the level of arrest; rather, it is one factor that may be considered in determining whether a 'stop' is an involuntary detention requiring reasonable articulable suspicion, or conversely, whether the 'stop' rises to the level of an arrest requiring probable cause." Id. at 16. Such expert testimony is precisely that which the Court of Appeals has explicitly forbidden in *Franceschina*.

Additionally, many of the Defendant's experts' shared opinion that police general orders and policies "are intended to provide internal guidance and discipline and not to form the basis of criminal prosecutions" is an opinion that at once is irrelevant and that also runs contrary to the limitations on expert testimony by offering an opinion—and an incorrect one, at that—about a question of Maryland law. Indeed, it makes no