STATE OF MARYLAND

v.

EDWARD NERO

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141033

STATE'S MOTION IN LIMINE TO ALLOW THE STATE TO PRESENT MEDICAL EXPERT TESTIMONY TO PROVE THAT THE DEFENDANT'S CONDUCT CREATED A SUBSTANTIAL RISK OF DEATH OR SERIOUS PHYSICAL INJURY

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(d) respectfully moves this Court *in limine* to issue a pretrial order confirming that the State will be permitted to present medical expert testimony to prove that the Defendant's conduct created a substantial risk of death or serious physical injury to the victim in this case within the meaning of the reckless endangerment statute, Criminal Law Article § 3-204. In support of this Motion, the State avers the following:

1. The State intends to present medical expert testimony at trial to prove that the Defendant's conduct created a substantial risk of death or serious physical injury to the victim in this case within the meaning of the reckless endangerment statute, Criminal Law Article § 3-204. Count 4 of the above-captioned indictment charges the Defendant with violating this statute by creating such a risk to Mr. Freddie Gray. On September 11, 2015, the Defendant filed a Motion to Dismiss this count in which he asserted that his alleged conduct could not as a matter of law create the type of risk needed to sustain a reckless endangerment conviction. Though the Defendant has disclosed that he also intends to call a medical expert on this subject, the State seeks a pretrial order confirming

that such testimony will be permitted so as to ensure an expeditious trial not interrupted by any dispute over the admissibility of such evidence.

2. Rule 5-702 permits expert testimony to be admitted to "assist the trier of fact to understand the evidence or to determine a fact in issue."

3. Regarding the facts in issue as to Count 4, Criminal Law Article § 3-204 proscribes that "[a] person may not recklessly . . . engage in conduct that creates a substantial risk of death or serious physical injury to another." "Reckless endangerment is . . . doubly inchoate" as a criminal offense, meaning "[a]t the *actus reus* level, it is one element short of consummated harm," and "[a]t the *mens rea* level, it is one element short of the specific intent necessary for either an attempt or for one of the aggravated assaults." *Williams v. State*, 100 Md. App. 468, 481 (1994). Although the offense "does not require that the defendant actually cause harm to another individual," the statute "is aimed at deterring the commission of *potentially* harmful conduct before an injury or death occurs." *State v. Albrecht*, 336 Md. 475, 500-01 (1994) (emphasis supplied).

4. When assessing whether the State has met its burden to prove this *potentiality* element, Judge Moylan, writing for the Court of Special Appeals, explained that "[w]hether the conduct in issue has, indeed, created a substantial risk of death or serious physical injury is an issue that will be assessed objectively on the basis of *the physical evidence in the case*." *Williams*, 100 Md. App. at 495 (emphasis supplied). This "objective determination [is] to be made by the trier of fact from *all the evidentiary circumstances* in the case." *Minor v. State*, 326 Md. 436, 443 (1992) (emphasis supplied).