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STATE OF MARYLAND

v.

EDWARD NERO

CRIMINAL DIVISION

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY

CASE No. 115141033

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STATE'S RESPONSE TO DEFENDANT'S MOTION *IN LIMINE* TO EXCLUDE VIDEO EVIDENCE RELATING TO MR. GRAY'S ARREST, OR IN THE ALTERNATIVE, TO EXCLUDE AUDIO EVIDENCE ACCOMPANYING VIDEO EVIDENCE

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 responds as follows to the Defendant's Motion *in Limine* to Exclude Video Evidence:

1. The Defendant's Motion *in Limine* seeks to exclude civilian cell phone video footage showing the events that immediately followed the Defendant's forcible restraint of Mr. Gray up to and including the Defendant's actions in placing Mr. Gray into the transportation wagon used in this case. The Defendant asserts that such footage is "irrelevant, immaterial, and highly prejudicial to the Defendant" and so should be excluded pursuant to Rule 5-403. Def. Mot. at 2. Specifically, the Defendant argues that the videos show "the period of time after the involuntary detention and arrest of Mr. Gray," making them "irrelevant to the issue of whether Mr. Gray was arrested without probable cause." Def. Mot. at 2. Similarly, he claims that because the videos do not "show the Defendant inside the transportation van, going inside the van, or even coming out of the van," they "are of no probative value and are irrelevant to the issue of whether Officer Nero failed to seat belt Mr. Gray" Def. Mot. at 3. Alternatively, he suggests

that even if the video evidence is admitted, its audio component should be redacted as irrelevant and inflammatory and as potentially misleading jurors into believing that the Defendant injured Mr. Gray. Def. Mot. at 3-4.

2. “Evidence that is not relevant is not admissible” at trial. Rule 5-402. To be deemed relevant, the evidence must have a “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.” Rule 5-401. A “consequential fact” is also called a “material proposition,” and “[m]ateriality looks to the relation between the proposition for which the evidence is offered and the issues in the case.” *Smith v. State*, 423 Md. 573, 590 (2011).

3. One of the key issues in this case is whether the Defendant arrested Mr. Gray without probable cause. That issue turns on the questions of what constitutes an “arrest” and when a police officer may be deemed to have acted criminally in restraining a citizen. The video evidence the State intends to offer bears directly on these matters, showing the Defendant continuing to apply force to Mr. Gray over Mr. Gray’s protests and cries and in spite of multiple members of the community arguing to the Defendant that he was acting illegally. The video also depicts the Defendant completing the process of the custodial arrest, thereby helping prove the Defendant’s intent to arrest. As to the audio track giving the appearance that the Defendant injured Mr. Gray, the State will not contend any such thing, eliminating the risk that the jury will be misled on this issue. Moreover, the Defendant’s nonreaction to Mr. Gray’s cries and to community members’ accusation that Mr. Gray was physically mistreated also bears directly on the Defendant’s intent to complete the course of action that began with the initial restraint.

