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STATE OF MARYLAND

v.

EDWARD NERO

CRIMINAL DIVISION

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY

CASE No. 115141033

* * * * *

**STATE'S RESPONSE TO DEFENDANT'S MOTION *IN LIMINE* TO PRECLUDE
REFERENCE TO OR ARGUMENT ABOUT THE LEGALITY OF THE KNIFE
RECOVERED FROM MR. GRAY IN THE COURSE OF HIS DETENTION AND
ARREST**

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 Preclude evidence about the legality of the knife recovered from Mr. Gray:

1. The Defendant's Motion *in Limine* seeks to exclude reference to or argument about the legality of the knife recovered from Mr. Gray during the Defendant's arrest of Mr. Gray. The Defendant bases his Motion purely on relevance grounds, arguing that the legality of the arrest is irrelevant because he believes the State's theory is that the Defendant criminally arrested Mr. Gray prior to discovering the knife, or, alternatively, because the Defendant reasonably believed the knife was illegal despite it not actually being so. Def. Mot. at 1-5.¹

¹ The Defendant also briefly suggests that because Officer Miller may have physically removed the knife from Mr. Gray and written the application for statement of charges against Mr. Gray, then somehow Officer Nero is relieved of any responsibility for police illegality involving the knife. Officer Nero's recorded statement to investigators clearly describes collective, coordinated action with Officer Miller and belies any such attempt to pass the blame to him; the Court has previously been provided with a copy of the statement, and the State will gladly provide an additional copy to demonstrate this fact.

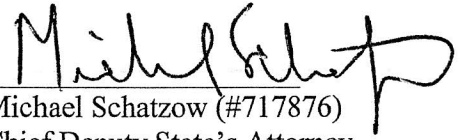
2. “Evidence that is not relevant is not admissible” at trial. Rule 5-402. To be deemed relevant, the evidence must have a “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 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. As set forth in the State’s Response to the Defendant’s Motion to Dismiss the assault charge against him (which the State incorporates as if fully stated in relevant part here), probable cause is an affirmative justification defense that a police officer may assert if charged with battery stemming from the force used to effect an allegedly unjustified arrest. The State will contend at trial that the Defendant’s arrest of Mr. Gray began when he forcibly restrained Mr. Gray and placed him in handcuffs. Because Maryland law allows an officer to assert the existence of probable cause as a valid affirmative defense in a case like this, the State must here also ultimately *disprove* the validity of the Defendant’s later asserted statement that he did not arrest Mr. Gray until after discovering the knife. The actual legality of the knife is critical to overcoming such an affirmative defense and to demonstrating that the Defendant only used the lawful knife as a post-hoc justification for the Defendant’s otherwise illegal conduct.

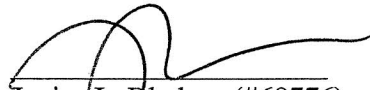
Wherefore, the State requests that this Court deny the Defendant’s Motion in Limine to Preclude evidence about the legality of the knife recovered from Mr. Gray.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2016, a copy of the foregoing State's Response to the Defendant's Motion *In Limine* to Preclude evidence about the legality of the knife recovered from Mr. Gray was mailed and e-mailed to:

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