STATE OF MARYLAND	*	IN THE
		CIRCUIT COURT FOR
v.	*	BALTIMORE CITY
	*	
EDWARD NERO	*	CASE No. 115141033
	*	

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STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO CHARGE A CRIME

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 herein to the Defendant's Motion to Dismiss for Failure to Charge a Crime. The State requests that the Court deny the Motion because (1) procedurally, it exceeds the permissible boundaries of this type of pre-trial motion to dismiss; and (2) substantively, it seeks erroneously to transform a police officer's qualified privilege to use force during a valid arrest from a permissible justification defense into an absolute immunity from prosecution for anything a police officer does to an arrestee. Police officers enforce the law; they are not above the law. When they act outside their privilege, they may be held criminally liable.

I. The Defendant's contention is based on what he assumes the evidence will be at trial and is not cognizable in a motion to dismiss under Rule 4-252(d)

The Defendant's Motion comes down to one argument: the First Count of the Indictment fails to charge the crime of second degree assault (in its intentional battery modality) because purportedly the State will not be able to prove that the Defendant police officer's battery of an arrestee, when based on the force used to effect an arrest without probable cause, amounts to

anything other than a basis to suppress evidence derived from the arrest pursuant to the exclusionary rule mandated in *Mapp v. Ohio*, 367 U.S. 643 (1961). Putting aside that this argument contravenes *Mapp*'s very foundation and discards over a hundred years of American common law (see Part II below), this argument asks the Court to exceed the inquisitional boundaries that Rule 4-252(d) permits during a pretrial motion to dismiss for failure to charge a crime.

The Court of Appeals in *State v. Taylor*, 371 Md. 617, 645 (2002), explained that "[a] motion to dismiss the charges in an indictment or criminal information [pursuant to Rule 4-252(d)] is not directed to the sufficiency of the evidence, i.e., the quality or quantity of the evidence that the State may produce at trial, but instead tests the legal sufficiency of the indictment on its face." Such a motion "may not be predicated on insufficiency of the State's evidence because such an analysis necessarily requires consideration of the general issue," and "where there are factual issues involved, a motion to dismiss on the grounds that the State's proof would fail is improper." *Id.* Whereas "[i]n a civil case, the trial court is permitted, in its discretion, to treat a motion to dismiss as a motion for summary judgment," "[t]here is simply no such analogue in criminal cases." *Id.* at 645-46. Accordingly, at this stage the only relevant question asks whether the Defendant has been informed of the State's second degree assault allegation by an indictment and bill of particulars "characterizing the crime" and "so describing it as to inform the accused of the specific conduct with which he is charged." *Dzikowski v. State*, 436 Md. 430, 445 (2013).

In this case, the Grand Jury's indictment alleged that the Defendant "did assault Freddie Carlos Gray, Jr. in the second degree" on April 12, 2015. The State also supplied the Defendant, as requested, with a Bill of Particulars informing him specifically that: