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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 EXCESSIVE FORCE BEING USED ON
MR. GRAY IN THE COURSE OF HIS DETENTION OR 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 excessive force being used on Mr. Gray in the course of his detention or arrest:

1. The Defendant's Motion *in Limine* seeks to exclude reference to or argument about excessive force being used on Mr. Gray in the course of his detention or arrest. The Defendant argues that such evidence would be irrelevant or impermissibly prejudicial because the State has charged the Defendant with assaulting Mr. Gray by using force against him without probable cause, not by using excessive force in effecting an arrest supported by probable cause.


2. As fully 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 herein), a citizen enjoys the constitutional right to remain free from unreasonable seizures by the government, and a police officer is only privileged to use force against a citizen when the officer does so within the scope of the police officer's privilege. "Excessive

force” is a relative term depending on the circumstances. *No amount of force* is reasonably necessary for an officer to discharge his duties in the absence of probable cause or reasonable suspicion. Indeed, without the legal justification needed to detain a citizen, *any amount of force is excessive* because the officer in that context has no valid privilege to use force. Because the State’s theory here is that the Defendant lacked probable cause to use the amount of force he applied against Mr. Gray, that amount of force is by definition “excessive.” Consequently, precluding the State from referencing or arguing about excessive force being used on Mr. Gray in the course of his detention or arrest would be tantamount to barring the State from prosecuting certain counts of the indictment in the first place. “Excessive force” is a proper question here for the finder of fact, not a matter for disposition in a pretrial motion.

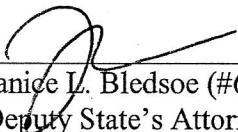
Wherefore, the State requests that this Court deny the Defendant’s Motion in Limine to Preclude evidence about excessive force being used on Mr. Gray in the course of his detention or arrest.

Respectfully submitted,

Marilyn J. Mosby



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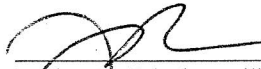
CERTIFICATE OF SERVICE

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 excessive force being used on Mr. Gray in the course of his detention or arrest was mailed and e-mailed to:

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