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STATE OF MARYLAND

v.

WILLIAM PORTER ,

Defendant.

* IN THE 2015 NOV 12 PM 12:29

* CIRCUIT COURT
BALTIMORE CITY
CRIMINAL DIVISION

* FOR

* BALTIMORE CITY

* Case Nos.: 115141037

* * * * *

DEFENDANT'S MEMORANDUM IN SUPPORT OF ADMISSIBILITY OF CHARACTER EVIDENCE

Now comes the defendant, William Porter, by and through undersigned counsel, and in response to the State's anticipated objection to the introduction of character evidence in the course of the trial of the above-captioned matter, provides the following argument.

Introduction

The defendant is charged in the above-captioned case with numerous alleged violations of the criminal laws of Maryland, specifically, the defendant is charged with manslaughter, second degree assault, reckless endangerment and misconduct in office. In sum, the defendant is charged with engaging in acts that allege the violent death of Freddie Gray. The defendant anticipates testifying in this matter, as well as presenting witnesses who will offer testimony pertaining to the character trait of veracity, as well as his reputation for peace and good order. The issue of credibility is present in both the prosecution and defense of this case.

The Maryland Rules Permit the Introduction of Character Evidence

Maryland Rule 5-404(a)(1)(A) gives criminal defendants the right to offer evidence of their good character for the relevant character traits involved in the charged offenses.

Specifically, the rule states:

(a) Character evidence generally. (1) In general. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(A) Character of accused. Evidence of a pertinent trait of character of an accused offered by the accused, or by the prosecution to rebut the same.

Subsection (b) addresses the character of the victim, and subsection (C) addresses the character of witnesses.

Rule 5-404(a)(2) provides the definitions for the afore-referenced section:

(2) Definitions. For the purposes of subsections (a)(1)(A) and (B) of this Rule, "accused" means a defendant in a criminal case and a child in alleged to be delinquent in an action in juvenile court, and for purposes of subsection (a)(1)(B), "crime" includes a delinquent act as defined by Code, Courts Article § 3-801.

In Braxton v. State, 11 Md. App. 435 (1971), the Court noted that when a defendant testifies as a witness, his credibility as a witness may be attacked. Although he is a defendant, if he assumes the role of a witness he may be attacked as such, and cannot claim immunity from that attack on the ground that he has not put his character in evidence. The Court stated that "character" within the contemplation of the rule is confined to truth and veracity. Braxton, 11 Md. App. at 438-439.

Professor McLain in her treatise "Maryland Evidence" states that in any case in which the defendant testifies at trial, his or her character for truthfulness and veracity is put indirectly "in issue" so that the prosecution may impeach his or her credibility. See McLain, Maryland Evidence § 404:2(ii)(A).

Thus, the offering of character evidence to show that the defendant has a reputation for truthfulness and veracity is appropriate when a defendant elects to testify and the State elects to cross-examine the defendant. The substance of the State's argument is that the defendant is not

telling the truth, and the State's witnesses are truth-tellers. Once the defendant takes the stand, he places his character for truthfulness in issue.

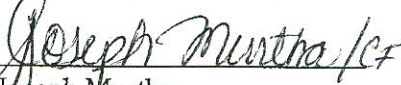
Further, the nature of the offense is such that it is a veracity impeaching offense. A veracity impeaching offense is defined as one that is "so relevant to credibility that convictions of the crime may be used to attack the credibility of a witness." Sabin v. State, 337 Md. 304, 307, n.1 (1995). The nature of the criminal charges contained in the above-captioned indictment establishes the basis for such an offense, and as such, character evidence pertaining to the defendant's reputation for truthfulness and veracity should be admitted.

In addition to the reasons set forth pursuant to Maryland Rule 5-404(a)(1)(A), Maryland Rule 5-608 permits evidence of a character witness pertaining to the reputation of the defendant-witness for truthfulness or untruthfulness.

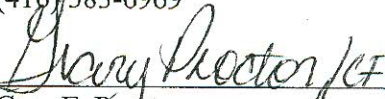
Further, additional character evidence is permissible when relevant. A defendant's reputation for peace and good order is relevant where a crime of violence is at issue. Hurley v. State, 60 Md. App. 539 (1984). The defendant is charged with a violation of Criminal Law Article, Section 3-203 of the Annotated Code of Maryland, second degree assault. Section 5-101 (c)(3) of the Public Safety Article of the Annotated Code of Maryland defines second degree assault as a crime of violence. As such, the defendant's reputation for peace and good order is relevant in this matter where the State alleges that he committed a crime of violence.

Wherefore, the defendant respectfully requests that this Honorable Court permit the defendant to present character witnesses on behalf of the defendant to offer evidence of the defendant's reputation for truthfulness and veracity, as well as his reputation for peace and good order.

Respectfully submitted,



Joseph Murtha
Murtha Psoras & Lanasa, LLC
1301 York Road, Suite 200
Lutherville, Maryland 21093
(410) 583-6969



Gary E. Proctor
Law Offices of Gary E. Proctor, LLC
8 E. Mulberry Street
Baltimore, Maryland 21202
(410) 444-1500

Attorney for Defendant
William Porter

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November, 2015 a copy of the foregoing Defendant's Memorandum in Support of Admissibility of Character Evidence was hand delivered to the Office of the State's Attorney for Baltimore City, 120 E. Baltimore Street, 9th Floor, Baltimore, Maryland 21202.


Joseph Murtha

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