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STATE OF MARYLAND

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v.

* CIRCUIT COURT

CIRCUIT COURT
BALTIMORE CITY
CRIMINAL DIVISION

* FOR

WILLIAM PORTER

* BALTIMORE CITY

Defendant

* CASE NO. 115141037

* * * * *

DEFENDANT'S MOTION IN LIMINE
TO EXCLUDE VIDEO EVIDENCE

NOW COMES Defendant, WILLIAM PORTER, by and through counsel, Joseph Murtha, Esquire, and Murtha, Psoras and Lanasa, L.L.C. and Gary E. Proctor, Esquire and the Law Office of Gary E. Proctor hereby respectfully files this Motion in Limine to exclude video evidence in the above-captioned matter, and in support states as follows:

INTRODUCTION

The above-captioned matter is scheduled for trial on November 30, 2015. The State has filed manslaughter, second degree assault, misconduct in office and reckless endangerment charges against the Defendant. The Defendant seeks to exclude video evidence of the arrest of Freddie Gray that was obtained from civilians. These videos, which have been highly publicized through numerous media outlets, shows the moments after Officers Edward Nero and Garrett Miller detained Freddie Gray. The videos depict the subsequent detainment and arrest of Mr. Gray. Mr. Gray is then placed into a Baltimore City Police Department transport van by members of the Baltimore City Police Department. There is no

allegation that Mr. Gray was injured during the course of his arrest. Audio within one of the videos has an individual stating that the decedent had been tased, which is not accurate.

Pursuant to a request for discovery, the State provided videos from four civilian cell phones. The defense is seeking to exclude these videos from being introduced in the State's case. The videos are identified in discovery as follows:

Cell_Phone_Video_mp4
(Presumed to have been taken by potential witness Brandon Ross)

Cell_Video_Daq_Walker_1of2_20971021_162421_mp4
(Presumed to have been taken by potential witness Daquantay Walker)

Cell_Video_Daq_Walker_2of2_21230217_195258_mp4
(Presumed to have been taken by potential witness Daquantay Walker)

Cell_Video_Gray_Stepping_into_Van_084308_mp4
(Presumed to have been taken by potential witness Brandon Ross)

The Defense seeks to exclude this evidence (any and all videos of the arrest and subsequent placement of Mr. Freddie Gray into the Baltimore City Police Department transport van) as it is irrelevant, immaterial, and inadmissible under Maryland Rules of Evidence.

I. The Evidence is Irrelevant.

It is clear that the video evidence is irrelevant to the charges levied against the Defendant. Maryland Rule 5-401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to

the determination of the action more or less probable than it would be without the evidence.” Therefore, evidence is only relevant if it tends to establish a material fact. *Lesson v. State*, 293 Md. 425 (1982). The evidence is considered immaterial if a reasonable factfinder would not attach importance to it in deciding a contested issue. *Paige v. Manuzak*, 57 Md.App. 620, 632 (1984).

In this case, the Defendant’s charges are based on his interaction with Mr. Freddie Gray when the Defendant responded to a call from Officer Ceaser Goodson for a “prisoner check”. The interaction took place at Dolphin Street and Druid Hill Avenue. That is the first moment in which the Defendant had any direct interaction with Mr. Gray. This interaction was well after the videos of Mr. Gray’s arrest had been taken. The videos portray the detainment, arrest and placement of Mr. Gray into the transport van near the Gilmore Homes. It is irrelevant to the charges levied against the Defendant. “Evidence which is...not probative of the proposition at which it is directed is deemed irrelevant.” Joseph F. Murphy, *Maryland Evidence Handbook* § 501 (4th ed. 2010).

II. The Evidence is More Prejudicial than Probative.

Pursuant to Maryland Rule 5-403, even if the evidence is relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. The Rule says, in its entirety, “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of

