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STATE OF MARYLAND

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2015 NOV 12 PM 12:30

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

cumulative evidence.” *Id.* That is the situation in this case. It would be highly prejudicial for such irrelevant and immaterial information to be presented to the trier of fact. Not only are the videos overtly prejudicial, they have the propensity to confuse the issue being presented to the triers of fact. The State has already conceded that:

The State agrees that the legality of the arresting officers' actions toward Mr. Gray is not relevant to any of the allegations against Defendant Porter. The State has no intention to introduce any evidence or make any argument about the legality of Mr. Gray's arrest, unless Defendant Porter for some reason controverts the legality of the arrest and thereby opens the door to such evidence or argument.

State's Response to Defendant's Motion in Limine to Preclude Reference to or Argument about Mr. Gray's Initial Detention Not being Supported by Reasonable Suspicion at 1. Thus, given the state agrees that the legality of the arrest is not an issue, Defendant submits the videos that evince it are likewise not admissible.

In *Burris* the Court of Appeals dealt with the introduction of the defendants gang affiliation during a murder trial. There had been no evidence presented to the jury of the murder having had anything to do with the defendant being in a gang. The Court of Appeals rejected the introduction of this evidence since, “the probative value of [the] testimony was substantially outweighed by the danger of unfair prejudice and in some instances cumulative of other evidence adduced at trial.” *Burris v. State* 435 Md. 370, (2013).

Burris furthered its holding where it reiterated its prior decision in *Odum*, that, “we keep in mind that ‘the fact that evidence prejudices one party or the

other, in the sense that it hurts his or her case, is not the undesirable prejudice referred to in Rule 5-403.'" *Odum v. State*, 412 Md. 593, (2010), quoting Lynn McLain, *Maryland Evidence: State and Federal*, § 403:1(b) (2d ed. 2001). Rather, evidence is considered unfairly prejudicial when 'it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which [the defendant] is being charged.' *Id.* The more probative the evidence, therefore, 'the less likely it is that the evidence will be unfairly prejudicial.' *Id.*" *Id.*

While Defendant submits that none of the arrest videos should be shown, in the event the Court disagrees, Defendant submits that to allow all four (4) into evidence will be cumulative, and violate Maryland Rule 5-403. The only effect that showing a jury four separate videos of an arrest of Mr. Gray, by a person not named Porter, which the state concedes the legality of which is not relevant to this trial, will be to unfairly prejudice this Officer.

In the case at hand, the State may attempt to present video evidence of events that occurred prior to the Defendant's actual involvement and is no different as to the prejudicial and cumulative effect discussed in *Burris*. The Court of Appeals' analysis is directly congruent with the case at hand, while the testimony elicited in *Burris* is significantly different, the effect of the videos in question would have the same chilling effect to a trier of fact.

For the foregoing reasons, the Defendant respectfully requests that this Honorable Court grant this Motion in Limine.

Respectfully Submitted,



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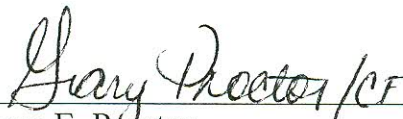


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion was emailed on November 12, 2015 and hand-delivered to the Office of the State's Attorney for Baltimore City on this 12 day of November, 2015.



Gary E. Proctor