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STATE OF MARYLAND

v.

WILLIAM PORTER

Defendant

* IN THE 2015 OCT 20 PM 4:19
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* CASE NO. 115141037

CIRCUIT COURT
BALTIMORE CITY
CRIMINAL DIVISION

* * * * *

DEFENDANT'S MOTION *IN LIMINE* TO PRECLUDE EVIDENCE OR ARGUMENT THAT THE FAILURE OF A POLICE OFFICER TO SEATBELT AN ARRESTEE IS TANTAMOUNT TO GROSS OR CRIMINAL NEGLIGENCE

Defendant William Porter, by undersigned counsel, hereby submits this Motion *in Limine* to Preclude Evidence or Argument that the Failure of a Police Officer to Seatbelt an Arrestee is Tantamount to Gross or Criminal Negligence. In support thereof, Defendant states as follows:

1. On September 11, 2015, Defendants Garrett Miller, Edward Nero, and Lt. Brian Rice filed separate motions asking this Court to dismiss the charges of reckless endangerment for failure to charge a crime. These motions were supplemented by replies filed by the Defendants on October 13, 2015.
2. In these motions and replies, Defendants Miller, Rice, and Nero articulated four primary arguments as to why the alleged failure of a police officer to seatbelt an arrestee cannot constitute gross or criminal negligence:
 - a. Every court in this country to consider whether the failure to seatbelt a detainee (even when handcuffed and leg-shackled) can constitute a gross or criminally negligent omission has held that it **does not**.
 - b. The Transportation Article of the Maryland Code specifically states that the failure to use a seatbelt cannot constitute evidence of simple negligence, let alone gross or criminal negligence. *See* MD. CODE. ANN., TRANSP. § 22-412.3 (West 2015).

- c. The State's reliance on a General Order requiring the use of seatbelts is antithetical to Maryland law which has long held that the purported violation (if one even exists) of such a "recently imposed and geographically unique" order cannot be considered evidence of gross or criminal negligence. *State v. Pagotto*, 361 Md. 528, 551 (2000).
 - d. There is absolutely no legal authority supporting the State's proposition that the failure of a police officer to seatbelt an arrestee can constitute a gross or criminally negligent omission.
3. In addition, Defendant William Porter asserts that the argument about the inapplicability of Baltimore Police Department general orders is supported by the fact that many jurisdictions in Maryland do not equip their police transport vans with seatbelts, while others have adopted policies which do not require the use of seatbelts. Moreover, the policy upon which the State relies was published just ten days prior to the events at issue. To find that Defendant Porter's alleged omission could rise to the level of gross or criminal negligence in Baltimore City on April 12th, when such actions would be "acceptable, non-criminal behavior if committed by any other police officer anywhere else in the State" or by an officer in Baltimore City just two weeks prior is simply "illogical." *Id.*

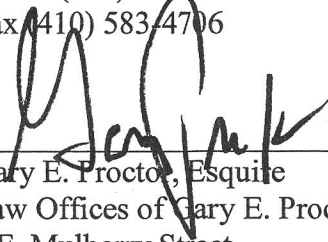
WHEREFORE, Defendant William Porter, by undersigned counsel, hereby requests that this Court GRANT his Motion *in Limine* to Preclude Evidence or Argument that the Failure of a Police Officer to Seatbelt an Arrestee is Tantamount to Gross or Criminal Negligence.

Respectfully submitted,



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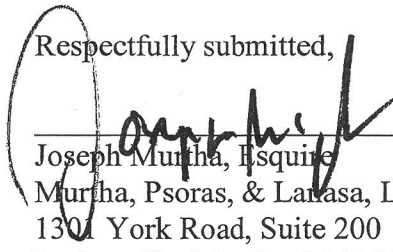
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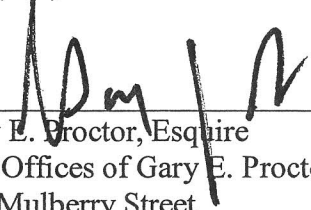
REQUEST FOR HEARING

Defendant respectfully requests a hearing on the Motion *in Limine* to Preclude Evidence or Argument that the Failure of a Police Officer to Seatbelt an Arrestee is Tantamount to Gross or Criminal Negligence.

Respectfully submitted,



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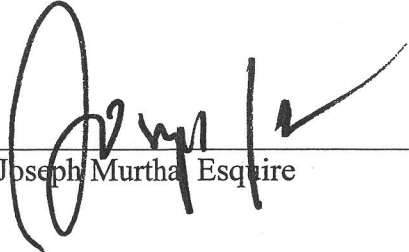
ORDER

Upon consideration of the Defendant's Motion *in Limine* to Preclude Evidence or Argument that the Failure of a Police Officer to Seatbelt an Arrestee is Tantamount to Gross or Criminal Negligence, it is this _____ day of _____, 2015 hereby **ORDERED** that the Defendant's Motion is **GRANTED**.

Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of October, 2015, a copy of the foregoing Motion, Request for a Hearing, and Proposed Order were hand delivered to Janice Bledsoe, Deputy State's Attorney, Office of the State's Attorney for Baltimore City, 120 East Baltimore Street, 9th Floor Baltimore, Maryland 21202.



Joseph Murtha Esquire