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STATE OF MARYLAND

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IN THE
CIRCUIT COURT FOR PH: 29
BALTIMORE CITY
CIRCUIT COURT
BALTIMORE CITY
CRIMINAL DIVISION
CASE NO.: 115141037

v.

WILLIAM PORTER

* * * * *

**MOTION IN LIMINE TO PRECLUDE TESTIMONY AND EVIDENCE CONCERNING
BALTIMORE POLICE DEPARTMENT GENERAL ORDERS AND POLICIES AS
THEY RELATE TO THE USE OF SEATBELTS IN POLICE VEHICLES**

Defendant, Officer William Porter, by undersigned counsel, hereby files this Motion *in Limine* to order the preclusion of testimony and evidence concerning Baltimore Police Department general orders and policies as they relate to the use of seatbelts in police vehicles. In support thereof, Defendant states the following:

I. Baltimore Police Department general orders and policies relating to the use of seatbelts in police vehicles must be excluded from the trial of Officer Porter because the failure to seatbelt a detainee cannot constitute evidence of gross or criminal negligence

The State may seek to introduce testimony and evidence concerning Baltimore Police Department general orders and policies as they relate to the use of seatbelts in police vehicles. Specifically, it is anticipated that the State will make reference to such information as evidence that the failure of a Baltimore police officer to seatbelt a detainee during transport constitutes the gross or criminal negligence necessary to establish the crimes of second degree assault, involuntary manslaughter, and reckless endangerment. However, given that the general orders and policies are unique to Baltimore City, they cannot be admitted for this purpose. Accordingly, they are irrelevant to, and must be excluded from, the trial of Defendant Officer William Porter.

In *State v. Pagotto*, the Court of Appeals of Maryland analyzed the legal significance (or insignificance) of an alleged violation of a geographically unique Baltimore Police Department guideline. 361 Md. 528, 550–51 (2000). In *Pagotto*, a Baltimore Police Department sergeant was convicted of involuntary manslaughter and reckless endangerment as a result of a traffic stop

during which his handgun accidentally discharged, killing the driver of the vehicle. *Id.* at 534–38. In order to establish the gross or criminal negligence needed for the conviction, the State relied upon three alleged violations of Baltimore Police Department guidelines. *Id.* at 538–39. One of the guidelines at issue required police officers to place their trigger finger underneath the trigger guard of their weapon when drawn. *Id.* at 544. Sergeant Pagotto had allegedly violated this guideline by placing his finger along the “slide” or side of his weapon, thereby negligently increasing the risk that his finger would slip to a position where it could cause the weapon to accidentally discharge. *Id.*

In evaluating whether the evidence presented by the State was legally sufficient to sustain the conviction, the Court found that the trigger finger placement guideline was unique to Baltimore City. *Id.* at 544–45. Officers in other jurisdictions were permitted to place their trigger finger along the side of their weapon in order to improve their reaction time in critical situations. *Id.* at 544. Moreover, the guideline was recently enacted as it had been published just three years prior to the events at issue. *Id.* In light of this information, the Court adopted the reasoning of the intermediate appellate court and held that any alleged violation of the Baltimore Police Department guideline, “whether considered alone or in combination with *any* other factor, [did] not remotely generate a *prima facie* case of gross negligence.” *Id.* at 550 (emphasis added) (quoting *Pagotto v. State*, 127 Md. App. 271, 310 (1999)). Rather, “at best, [it] amounted to an actionable case in civil negligence.” *Id.*

In elaborating upon the absurdity of the State’s argument that a police officer’s conduct can be permitted in one jurisdiction, while also being deemed criminally negligent in another merely because it violates a departmental guideline, the Court adopted the following language from the intermediate appellate court:

