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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.: 15141037

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:

Had a Maryland State Trooper or a Baltimore County Officer, for instance, ridden along with Sergeant Pagotto on February 7, 1996, and engaged in precisely the same conduct that Sergeant Pagotto did, that State Trooper or County Officer would have been acting with complete propriety with respect to the placement of the trigger finger on a weapon. Had Sergeant Pagotto himself placed his trigger finger on the “slide” of his weapon on February 7, 1993, instead of on February 7, 1996, he would then have been acting with complete propriety. Except for a criminal violation of a local municipal or county ordinance, precisely the same act under precisely the same circumstances cannot be a crime in Baltimore City but not a crime in Baltimore County.

Id. at 551 (citations omitted). The Court of Appeals further reaffirmed the intermediate’s court’s finding that the State’s reasoning was “illogical”:

The State’s logic leads to the conclusion that a police officer placing his finger on the slide of the weapon is criminally negligent behavior if committed by a Baltimore City Police Officer in Baltimore City, but acceptable, non-criminal behavior if committed by any other police officer anywhere else in the State. The Court of Special Appeals was correct in concluding that this result is illogical.

361 Md. at 551.

Any Baltimore Police Department general order or policy relating to the use of seatbelts in police vehicles is geographically unique to Baltimore City. Handcuffed detainees are routinely transported in police vans, without seatbelts, in other jurisdictions throughout Maryland. As detailed in a survey published by The Baltimore Sun, “prisoner transport vans used by county law enforcement agencies [in the Baltimore region] generally are not equipped with seat belts.” *See* Alison Knezevich & Pamela Wood, *Most Police Vans in Baltimore Region Lack Seat Belts*, BALT. SUN (May 10, 2015) (attached as Exhibit A). In Baltimore County, for instance, none of the ten vans used by police officers to transport detainees are equipped with seatbelts. *Id.* Additionally, in Carrol County, “only one of the agency’s two vans has seatbelts.” *Id.* Consequently, any alleged violation of a Baltimore Police Department general order or policy relating to the use of seatbelts is unique to Baltimore City, and cannot constitute gross or

criminal negligence under *Pagotto*. This remains true even if the alleged violations are taken into consideration with other factors the State may raise at trial. 361 Md. at 550.

Given that the violation of the general orders and policies cannot constitute gross or criminal negligence, they are inadmissible to Officer Porter's case with respect to the crimes of second degree assault, involuntary manslaughter, and reckless endangerment. In order to be admissible, the general orders and policies must be relevant: they must have a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MD. RULE 5-401. The only potential use of these items with respect to the crimes of second degree assault, involuntary manslaughter, and reckless endangerment, would be to support the State's contention that a police officer can be held criminally negligent for failing to seatbelt a detainee during transport. However, under *Pagotto*, the general orders and policies cannot be used for this purpose. They are therefore irrelevant to, and must be excluded from, the trial of Officer Porter. MD. RULE 5-402 ("Evidence that is not relevant is not admissible.").

Baltimore Police Department general orders and policies relating to the use of seatbelts in police vehicles must also be excluded from the trial of Officer Porter because their "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury[.]" MD. RULE 5-403. As explained above, the general orders and policies have little, if any, probative value to Officer Porter's trial. Instead, their admission would only serve to mislead the jury into believing that a violation of the general orders or policies constitutes a criminally negligent act when, as a matter of law, it does not.

II. Baltimore Police Department Policy 1114 must be excluded from trial because the State cannot show that Officer Porter had actual knowledge of the policy

The State may also seek to argue that Baltimore Police Department Policy 1114 as evidence that Officer Porter consciously ignored a duty required of his position for the crime of misconduct in office. However, in order to be relevant to the crime, the State must prove that Officer Porter had *actual knowledge* of the Policy. See MPJI-CR 4:23 (“The word ‘corruption,’ as an element of misconduct in office, is used in the sense of depravity, perversion or taint . . . Thus, the conduct must be a *willful* abuse of authority and not merely an error in judgment.”) (emphasis added) (internal citations omitted).

Despite the fact that Policy 1114 was published just nine days prior to Freddie Gray’s arrest, and disseminated just three days before his arrest, it is anticipated that the State will argue that Officer Porter was subjectively aware of the Policy. However, the State has failed to identify any expert capable of showing that Officer Porter actually received the email, opened the email, or read the new Policy. Absent such evidence, the mere existence of Policy 1114 is irrelevant to the crime of misconduct in office and must be excluded from trial.

WHEREFORE Defendant Officer William Porter respectfully requests this Honorable Court to order the preclusion of any and all reference to or argument concerning Baltimore Police Department General Orders and Policies as they relate to the use of seatbelts in police vehicles.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of November 2015, a copy of the foregoing Motion was emailed and hand-delivered to Janice Bledsoe, Deputy State's Attorney for Baltimore City, 120 E. Baltimore Street, 9th Floor, Baltimore, Maryland 21202.



Joseph Murtha, Esquire