* IN THE

* CIRCUIT COURT

V.

* FOR

* FOR

* CASE No.: 115141037

MOTION IN LIMINE PRECLUDE TESTIMONY AND EVIDENCE CONCERNING INFORMATION NOT PERSONALLY KNOWN BY DEFENDANT OFFICER PORTER PRIOR TO HIS INTERACTION WITH MR. FREDDIE GRAY ON APRIL 12, 2015

Defendant, Officer William Porter, by undersigned counsel, pursuant to Maryland Rule 5-609, files this Motion in Limine to order the preclusion of any and all testimony and evidence concerning information not personally known by Defendant Officer Porter, prior his interaction with Mr. Freddie Gray on April 12, 2015. In support, Defendant states the following:

The State may seek to introduce testimony and evidence concerning information not personally known by Defendant Officer Porter prior his interaction with Mr. Freddie Gray on April 12, 2015, as substantive evidence to be used whether Defendant Officer Porter's actions were reasonable in light of the totality of the circumstances. The State may also seek to make reference to, or argue about, such information as it pertains to the determination of Defendant Officer Porter's reasonableness. The decedent, Mr. Gray was briefly detained, then arrested by officers other than Defendant Officer Porter. The State does not allege, nor could it factually support, that Defendant Officer Porter was present during portions of Mr. Gray's interaction with police on April 12, 2015. Therefore, at the point of Defendant Officer Porter's interaction with Mr. Gray, Defendant Officer Porter would not have been aware nor could he have been aware of the entirety of events surrounding Mr. Gray's interaction with law enforcement on that date. Because

Defendant Officer Porter is being criminally prosecuted under the theory that he failed to act as a reasonable officer would under the circumstances known to Defendant Officer Porter, in making that determination, the trier of fact should be limited to analyzing information know by Defendant Officer Porter.

MD. RULE 5-402 states that "evidence that is not relevant is not admissible." MD. 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 probable or less probable than it would be without the evidence." "Even reliable evidence is admissible only if it is relevant in the particular case, i.e., if it has a tendency to make the existence of a fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence." State v. Smullen, 380 Md. 233, 268 (2004). Because the reasonableness of Defendant Officer Porter's actions must legally be determined according to what he personally knew, information not know by Defendant Officer Porter would not be relevant to the crimes for which Defendant Officer Porter stands accused. Moreover, MD. RULE 5-403 states that "[a]lthough 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." Thus, even if the Court found the testimony of some marginal relevance, the issues would be certainly lead to "unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time."

In short, this motion should be granted under the same reasoning as the decision to sever the trials of the Defendant Officers. Evidence relevant to the determination of the innocence or guilt of one defendant may completely irrelevant to such determinations for another defendant. As this Court has previously noted, there is no conspiracy charge in the case at bar, and thus said

testimony would be inadmissible under MD. RULE 5-803(a)(5). Defendant Officer William Porter should be tried, and legally must be tried, based upon his own actions, not those of any other officer or any other person.

WHEREFORE Defendant Officer William Porter respectfully requests this Honorable Court to order the preclusion of any and all reference to, or argument about, Freddie Gray's initial detention not being supported by reasonable suspicion, Mr. Gray's arrest not being supported by probable cause, or Mr. Gray's arrest not being otherwise legally justified.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on the 26th day of October 2015, a copy of the foregoing

Motion was hand-delivered to Janice Bledsoe, Deputy State's Attorney for Baltimore City, 120 E.

Baltimore Street, 9th Floor, Baltimore, Maryland 21202.

Gary E. Proctor