

STATE OF MARYLAND

2015 NOV * 9 P 2: 33 IN THE

v.

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CRIMINAL * DIVISION

CIRCUIT COURT FOR
BALTIMORE CITY

WILLIAM PORTER

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CASE No. 115141037

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**STATE’S RESPONSE TO DEFENDANT’S MOTION IN LIMINE TO PRECLUDE
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**

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State’s Attorney for Baltimore City; Michael Schatzow, Chief Deputy State’s Attorney for Baltimore City; Janice L. Bledsoe, Deputy State’s Attorney for Baltimore City; and Matthew Pillion, Assistant State’s Attorney for Baltimore City; and responds as follows to the Defendant’s Motion In Limine to Preclude 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:

1. The Defendant’s Motion in Limine requests the Court to exclude evidence or argument about the legality of Mr. Gray’s arrest as being irrelevant to the consequential facts of this case.
2. 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.

3. The State, however, draws a distinction between evidence of the *legality* of the arrest and evidence of the *arrest itself*, the former being irrelevant but the latter being an element of some of the charges. The State also distinguishes the *legality* of the events leading up to Mr. Gray's arrest from the *events themselves* that preceded Mr. Gray's arrest. The State must be permitted to give the jurors sufficient context for the matters they will consider in Defendant's Porter's case. See Lynn McLain, *Maryland Rules of Evidence*, 64 (3d ed. 2007) ("The word 'fact' as used in Rule 5-401 is intended to be construed liberally. The Rule is not intended . . . to exclude . . . evidence that provides context or background for the subject matter of the trial."). This context should include the basic facts that Mr. Gray was walking along Pennsylvania Avenue with his friends, was chased by police officers for a certain distance, and was taken into police custody. The jury need not know why those officers chased and arrested Mr. Gray, but the jury should at least know as background information what Mr. Gray had experienced just prior to interacting with Defendant Porter. Moreover, evidence of the chase itself is necessary to understand portions of Defendant Porter's statement, which the Court has reviewed and so which the State need not otherwise detail in this pleading.

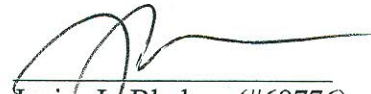
Wherefore, the State consents to the Defendant's Motion in Limine to the extent the Court's order only precludes evidence or argument about the legality of Mr. Gray's arrest (if not controverted by the Defendant), but the State requests that the Motion be denied to the extent the Defendant seeks to preclude evidence of Mr. Gray's arrest itself or evidence giving that arrest sufficient context for the jurors to understand aspects of the case.

Respectfully submitted,

Marilyn J. Mosby



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CERTIFICATE OF SERVICE

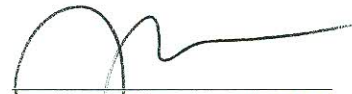
I hereby certify that on this 9th day of November, 2015, a copy of the State's Response to the Defendant's Motion In Limine to Preclude Reference to or Argument about Freddie Gray's Initial Detention Not Being Supported by Reasonable Suspicion, Mr. Gray's Arrest Not Being Supported by Probable Cause, or Mr. Gray's Arrest Not Being Otherwise Legally Justified was mailed and e-mailed to:

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