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STATE OF MARYLAND

* IN THE

* CIRCUIT COURT

CRIMINAL DIVISION

v.

* FOR

LT. BRIAN RICE

* BALTIMORE CITY

* CASE NO. 115141035

**DEFENDANT'S MOTION IN LIMINE TO EXCLUDE VIDEO EVIDENCE
RELATING TO MR. GRAY'S ARREST, OR IN THE ALTERNATIVE, TO EXCLUDE
AUDIO EVIDENCE ACCOMPANYING VIDEO EVIDENCE**

Comes now, Defendant, Lieutenant Brian Rice, by and through undersigned counsel, Michael J. Belsky, Esq., Chaz R. Ball, Esq., and Schlachman, Belsky & Weiner, P.A., and hereby respectfully files this Motion *in Limine* to exclude video and audio evidence relating to Mr. Gray's arrest, the above-captioned matter, and states the following in support thereof:

INTRODUCTION

The above-captioned matter is scheduled for trial on July 6, 2016. The State has charged the Defendant as follows: (i) involuntary manslaughter; (ii) misconduct in office, by malfeasance, by allegedly arresting Freddie Gray without probable cause; (iii) misconduct in office, by way of nonfeasance, by failing to secure Mr. Gray with a seatbelt during the process of Mr. Gray being transported in a police vehicle, (iv) second degree reckless assault, and (v) reckless endangerment which the State avers is supported by the defendant's failure to "secure Mr. Gray with a seatbelt during the process of Mr. Gray being transported in a police vehicle."

Pursuant to a request for discovery, the State provided videos from civilian cell phones as well as footage from CCTV cameras. While the Defense concedes the admissibility and relevance of video of the second stop, the defense now seeks to exclude all videos depicting the initial detention and/or arrest of Mr. Gray, which occurred at Stop One. The Defense seeks to

exclude this as it is irrelevant, immaterial, and highly prejudicial to the Defendant, as such inadmissible under Maryland Rule §5-401 and Rule §5-403.

I. The Video Evidence is Irrelevant, Prejudicial and has no Probative Value

Evidence, to be admissible, must be both relevant and material. *Lai v. Sagel*, 373 Md. 306, 319 (2003). Maryland 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 or less probable than it would be without the evidence.” It is easily apparent that the video evidence identified herein is irrelevant to the charges levied against the Defendant as a reasonable fact finder would **not** attach importance to any of the videos in deciding a contested issue. *Paige v. Manuzak*, 57 Md.App. 620, 632 (1984).

A. Misconduct in Office for an Arrest Without Probable Cause

The video depicting the initial detention and arrest at Stop One does not show Lt. Rice either prior to, or during, the involuntary detention and subsequent arrest of Mr. Gray. Rather, it shows, from various points of view, the period of time after the involuntary detention and arrest of Mr. Gray. The video is irrelevant to the issue of whether Mr. Gray was arrested without probable cause, the basis for which the State has charged the Defendant with misconduct in office (malfeasance).

B. The Charges for Failing to Seatbelt Mr. Gray

The video from Stop One, which has been broadly publicized in the media and on the Internet, has no probative value and is irrelevant to the issue of whether Lt. Rice failed to seat belt Mr. Gray, the basis for which the State has charged the Defendant with reckless endangerment and misconduct in office (nonfeasance).

II. The Audio Evidence is Irrelevant, Prejudicial and has no Probative Value

The video the State intends to introduce contains audio which consists of Mr. Gray screaming and hearsay statements from citizens in the community. This audio has no probative value and is unfairly prejudicial. The Defendant requests that the court exclude the accompanying audio evidence.

At a minimum, the audio will serve to confuse the issues and mislead the jury into considering whether Mr. Gray was injured during the course of his arrest, thus causing irreparable prejudice to the Defendant. There is no allegation from the State that Mr. Gray was injured during the course of his arrest; however, the audio includes screams from Mr. Gray, coupled with the hearsay statements of surrounding citizens, all of which are wholly irrelevant. Mr. Gray's screams, if out of frustration or to garner attention, are not probative and if admitted will merely inflame the emotions of the jury thus increasing the prejudicial effect. Consequently, the probative value of the video and its audio are substantially outweighed by its prejudicial effect and thus shall be excluded.

III. The Video and Audio Evidence Unfairly Prejudices the Defendant

There is no allegation that Lt. Rice injured Mr. Gray. However, the video and accompanying audio evidence from Stop One, which the State seeks to introduce, incorrectly makes it appear that way. Indeed, Mr. Gray's screams and passive conduct appeared so pitiful and inflammatory to viewers that they caused the media to speculate that Mr. Gary suffered his fatal injury during the arrest -- a contention with which the State not only disagrees, but moreover, a contention which the State must rebuke in order to support its averment that Mr. Gray could stand on his own prior to being placed in the van. For all such reasons, not only is the probative value of the video evidence substantially outweighed by the danger of unfair prejudice,

but even assuming, *arguendo*, that this Honorable Court allows the State to introduce the video evidence, the State need not admit the audio of Mr. Gray's scream, to prove any fact in dispute. Accordingly, the probative value of the video evidence, as well as the audio accompanying the video, is substantially outweighed by the danger of unfair prejudice and thus, the Defendant requests that this Honorable Court exclude the evidence pursuant to Rule §5-403.

For the foregoing reasons, Defendant respectfully requests that this Honorable Court grant this Motion *in Limine*.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June, 2016, a copy of the foregoing Motion was mailed, first class postage prepaid to Michael Schatzow, Chief Deputy State's Attorney, Office of the State's Attorney for Baltimore City, 120 East Baltimore Street, Baltimore, Maryland 21202.



Chaz R. Ball, Esquire