

2016 JUN 13 P 4: 18

CRIMINAL DIVISION

STATE OF MARYLAND

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IN THE

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CIRCUIT COURT

v.

\*

FOR

LT. BRIAN RICE

\*

BALTIMORE CITY

\*

Case No.: 115141035

\* \* \* \* \*

**MOTION IN LIMINE TO EXCLUDE REFERENCE TO OR ADMISSION OF THE  
SEATBELT AUDIT REPORTS OR DEPARTMENTAL CORRESPONDENCE  
REGARDING SEATBELT AUDIT REPORTS**

Defendant, Lt. Brian Rice, by undersigned counsel, files this Motion in Limine to order the exclusion of reference to or admission of any and all of the seatbelt audit reports or departmental correspondence regarding seatbelt audit reports conducted by the Baltimore Police Department. In support, Defendant states the following:

I. Introduction

On October 13, 2015, the State disclosed as part of discovery in this matter Prisoner Transport Vehicle Seat Belt Inspections conducted by the Baltimore Police Department's Professional Standards and Accountability Bureau. These inspections, which occurred in 2012, 2014, and 2015 were spot checks of 9 to 15 arrestee transports of the approximately 40,000 prisoner transports to Central Booking Intake Facility that occur every year. These inspections looked into whether wagon drivers assured both the driver and the arrestee were seatbelted. The State does not contend that it can prove that Lt. Rice was aware of any of these inspections, nor can it argue that these inspections evaluated the actions of any officer other than transport wagon drivers. The State,

however, intends to introduce these Inspections as evidence of the risk associated with failing to seatbelt an arrestee. Lt. Rice moves to preclude reference to or admission of any and all of the seatbelt audit reports or departmental correspondence regarding seatbelt audit reports because there is no evidence that he was aware that these audits took place, because he did not operate a wagon, because he was not the subject of the inspection, and because the audits lack the indicia of reliability necessary to have the probative value to overcome the clearly prejudicial effect.

## II. Applicable Standard

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 than it would be without the evidence.” *State v. Smullen*, 380 Md. 233, 268 (2004). 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.”

## III. There is No Evidence that Lt. Rice Was Aware of the Audits or Findings of the Audits

The State may seek to introduce evidence of the seatbelt audits reports or departmental correspondence regarding seat belt audit reports conducted in the time between 2012 and April 12, 2015. There is no evidence that Lt. Rice was aware of the audits, nor the findings of any of the

previously conducted audits. Without first establishing that Lt. Rice actually knew of the audit, the findings of the audit or the reason for which the audit was conducted, evidence concerning the audit would not be relevant to his knowledge or to the reasonability of his actions. Moreover, these audits have nothing to do with Lt. Rice's assessment of danger or safeness when the decision was made to not seat belt Mr. Gray. As a result, the audits do not aid a trier of fact in determination of whether Lt. Rice was reasonable in his actions on April 12, 2015.

#### IV. Lt. Rice Would Not Have Been the Subject of the Audit

Defendant also seeks to exclude evidence of the seatbelt audits reports or internal correspondences regarding seat belt audit reports conducted in the time between 2012 and April 12, 2015 because Lt. Rice would not have been the subject of the audit. The stated purpose of the audit was to determine whether Baltimore Police Officers were in compliance with the proper use of seatbelts. However, the focus of the audit was on the wagon drivers, in order to determine their compliance with the proper use of seatbelts in police transport vans. These audits specifically applied to only wagon drivers and their seat belting of themselves as well as detainees presumably because of the departmental position of wagon drivers being ultimately responsible for the seat belting of arrestees. These audits did not address any responsibility or even look to the actions or inactions of any other officers who may have participated in the detention. These audits are therefore not relevant to Lt. Rice's actions or to the reasonability of any action or inaction on April 12, 2015.

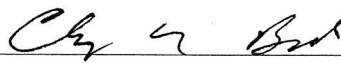
#### V. The Audit's Results Lack Outward Indicia of Reliability

The audits' results lack outward indicia of reliability in that they lack a sufficient sample size, a shared error rate, were not peer-reviewed and do not have any other indicia of sufficiently

being a representation of officers in the Department as a whole. These audits were not true and accurate scientific studies. The 2012 audit only inspected 18 transports. The April 10, 2014 Audit only inspected 10 transports, including 1 from each of the City's 9 Districts. Additionally, testing such small numbers of wagon transports during a short time-period when around 40,000 people are transported to Central Booking Intake Facility each year in Baltimore City does not provide a sufficient sample size to indicate the amount of reliability. It is also unclear what error rate existed as to the reliability of these audits as representative of arrestees transported by the Department as a whole. Therefore, there is no way to measure the quality or accuracy of these studies. Moreover, these audits was not peer-reviewed by anyone to confirm that they consisted of an adequate way to measure the rate of usage of seatbelts within the Department. Overall, these audits consistently lack a showing of reliability and cannot be said to have the requisite probative value to overcome the clearly prejudicial effect.

WHEREFORE, Lt. Brian Rice respectfully requests the exclusion of evidence of the seatbelt audits reports or internal correspondences regarding seat belt audit reports conducted in the time between 2012 and April 12, 2015, conducted by the Baltimore Police Department.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June 2016, a copy of Defendant Lieutenant Rice's Motion *In Limine* to Exclude Reference to or Admission of the Seatbelt Audit Reports or Departmental Correspondence Regarding Seatbelt Audit Reports was served via first class mail, postage prepaid upon:

Michael Schatzow, Esquire  
Chief Deputy State's Attorney for Baltimore City  
120 E. Baltimore Street  
9th Floor  
Baltimore, Maryland 21202



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Chaz R. Ball