

RECEIVED FOR RECORD
CIRCUIT COURT FOR
BALTIMORE CITY
2016 JUN 13 P 4: 20
CRIMINAL DIVISION

STATE OF MARYLAND * IN THE
* CIRCUIT COURT
v. * FOR
LT. BRIAN RICE * BALTIMORE CITY
* Case No.: 115141035

* * * * *

MOTION IN LIMINE TO PRECLUDE REFERENCE TO OR ARGUMENT ABOUT THE LEGALITY OF THE KNIFE RECOVERED FROM MR. GRAY IN THE COURSE OF HIS DETENTION AND ARREST

Defendant, Lt. Brian Rice, by undersigned counsel, files this Motion in Limine to order the preclusion of any and all reference to or argument regarding the legality of the knife recovered from Mr. Gray in the course of his detention or arrest. In support, Defendant states the following:

1. On April 12, 2015 Officer Garrett Miller arrested Freddie Gray. Officer Miller presented an Application for Statement of Charges to the Court Commissioner. The Application states as follows:

I, the undersigned apply for statement of charges and a summons or warrant which may lead to the arrest of the above named Defendant because on or about 12 April 2015 at 1700 Block of Presbury Street, Baltimore Maryland, the above named Defendant fled unprovoked upon noticing police presence. The Defendant was apprehended in the 1700 Block of Presbury St. after a brief foot chase. This officer noticed knife clipped to the inside of his front right pants pocket. The defendant was arrested without force or incident. The knife was recovered by this officer and found to be a spring assisted, one hand operated knife. During transport to Western District via wagon transport the Defendant suffered a medical emergency and was immediately transported to Shock Trauma via Medic.

2. Upon review of the Application for Statement of Charges and having found probable cause, the Commissioner charged Freddie Gray with a violation of the Baltimore City Code Art.19 §59-22.

3. On May 1, 2015, Major Sam Cogan of the Baltimore City Sherriff's Office, on behalf of the Baltimore City State's Attorney's Office, filed a Statement of Probable Cause charging Lieutenant Brian Rice with one count of Manslaughter, two counts of Second Degree Assault, two counts of Misconduct in Office and one count of False Imprisonment. The Statement of Probable Cause states as follows:

I, the undersigned, apply for statement of charges and a summons or warrant which may lead to the arrest of the above named Defendant because on or about April 12, 2015, between 8:45 and 9:15 a.m., near the corner of North Avenue and Mount Street, Lieutenant Brian Rice of the Baltimore Police Department (BPD), while on bike patrol with Officers Garrett Miller and Edward Nero, made eye contact with Mr. Freddie Gray, Jr. (DOB 8-16-1989). Having made eye contact, Mr. Gray subsequently ran from Lt. Rice. Lt. Rice then dispatched over a departmental radio that he was involved in a foot pursuit, at which time bike patrol Officers Miller and Nero also began to pursue Mr. Gray. Having come in contact with the pursuing officers, Mr. Gray surrendered to Officers Miller and Nero in the vicinity of the 1700 block of Presbury Street. Officers Miller and Nero then handcuffed Mr. Gray and moved him to a location a few feet away from his surrendering location. Mr. Gray was then placed in a prone position with his arms handcuffed behind his back. It was at this time that Mr. Gray indicated that he could not breathe and requested an inhaler to no avail. **Officers Miller and Nero then placed Mr. Gray in a seated position and subsequently found a knife clipped to the inside of his pants pocket. The blade of the knife was folded into the handle. The knife was not a switchblade knife and is lawful under Maryland law.** These officers subsequently removed the knife and placed it on the sidewalk. Mr. Gray was then placed back down on his stomach, at which time Mr. Gray began to flail his legs and scream as Officer Miller placed Mr. Gray in a restraining technique known as a "leg lace" while Officer Nero physically held him down against his will until a BPD wagon arrived to transport Mr. Gray. Lt. Rice,

Officer Miller and Officer Nero failed to establish probable cause for Mr. Gray's arrest as no crime had been committed by Mr. Gray. Accordingly, Lt. Rice, Officer Miller, and Officer Nero illegally arrested Mr. Gray.

4. Based on the charging document filed against Lieutenant Rice, it is anticipated that the State may argue that there was no probable cause to arrest Mr. Gray because it was lawful for him to possess this weapon. The State has identified an expert witness, Mr. Sean Norris, the president of a high end retail cutlery shop in Frederick, Maryland. It is anticipated that the State will attempt to offer Mr. Norris to present testimony regarding knife mechanics, knife history and knife sales.

5. 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."

6. Assuming *arguendo* that the knife in question is a lawful weapon, this fact is irrelevant to the determination of whether the arrest was supported by probable cause.

7. "The State has consistently argued that Mr. Gray was arrested prior to the discovery of the knife in his pocket, such that the legality of the knife is largely immaterial except to rebut any

claims the Defendants may raise about their beliefs and the reasonableness of those beliefs.” See *State’s Response to Defendant’s Supplement to Defendants’ Joint Motion to Compel and for Sanctions*.

8. The State’s theory of prosecution regarding one of the misconduct charges relies solely on an argument that the detention of Mr. Gray following the foot chase but before the recovery of the weapon was in fact an arrest requiring probable cause. Therefore, the legality or illegality of the weapon has no relevance to this determination.

9. In the alternative, if the State were to change its theory of prosecution and argue that the arrest of Mr. Gray was not supported by probable cause because the weapon was lawful, this allegation is also irrelevant to the determination of guilt.

10. The State is aware that Officer Miller, not Lt. Rice effectuated the arrest of Freddie Gray.

11. The State is aware that Officer Miller, not Lieutenant Rice, drafted the charging document and presented the charging document to the Court Commissioner.

12. Most notably, the State is aware that the Court Commissioner, not Lieutenant Rice, made a finding that possession of a spring assisted knife is a violation of the Baltimore City Code, Article 19 §59-22.

13. There is no dispute that the weapon recovered was a spring assisted knife.

14. The Baltimore City Code provides: It shall be unlawful for any person to sell, carry, or possess any knife with an automatic spring or *other device for opening and/or closing the blade*, commonly known as a switch-blade knife. Art.19, §59-22.

15. The question raised is whether a spring assisted knife is a violation of the Baltimore City Code, Art.19, §59-22.

16. Assuming *arguendo* that the spring assisted knife does not violate the City Code, this is at worst as mistake of law.

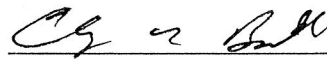
17. As the United States Supreme Court has recently held, “reasonable men make **mistakes of law**, too, and such mistakes are no less compatible with the concept of reasonable suspicion. Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground. Whether the facts turn out to be not what was thought, or the law turns out to be not what was thought, the result is the same: the facts are outside the scope of the law. There is no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable **mistake of law**.” *Heien v. North Carolina*, 135 S.Ct, 530, 536, 190 L.Ed.2d 475 (2014).

18. In addition, the State is aware that at least 100 people have been arrested and charged with the possession of a spring assisted knife since Ms. Mosby assumed her position as State's Attorney, and that many those knives bear striking resemblance to that found on Mr. Gray.

19. In each and every one of these cases, either a Court Commissioner or an Assistant State's Attorney has found probable cause for the arrest and has approved the prosecution for a violation of Art. 19 59-22, based on the allegations of the possession of a spring assisted knife.

WHEREFORE Defendant Lieutenant Brian Rice respectfully requests this Honorable Court to order the preclusion of any and all reference to or argument regarding the legality of the knife recovered from Mr. Gray in the course of his detention or arrest.

Respectfully submitted,



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CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on the 13th day of July 2016, 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.


Chaz R. Ball