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CIRCUIT COURT FOR
BALTIMORE CITY

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STATE OF MARYLAND

* IN THE

v.

* CIRCUIT COURT FOR
* BALTIMORE CITY

LT. BRIAN RICE

*
* CASE NO.: 115141035
*

* * * * *

**MOTION *IN LIMINE* TO PRECLUDE TESTIMONY AND EVIDENCE CONCERNING
BALTIMORE POLICE DEPARTMENT GENERAL ORDERS AND POLICIES AS
THEY RELATE TO THE USE OF SEATBELTS IN POLICE VEHICLES**

Defendant Lt. Brian Rice, by undersigned counsel, hereby files this Motion *in Limine* to order the preclusion of testimony and evidence concerning Baltimore Police Department general orders and policies as they relate to the use of seatbelts in police vehicles. In support thereof, Defendant states the following:

I. Baltimore Police Department general orders and policies relating to the use of seatbelts in police vehicles must be excluded from the trial of the Defendant because the failure to seatbelt a detainee cannot constitute evidence of gross or criminal negligence

The State may seek to introduce testimony and evidence concerning Baltimore Police Department general orders and policies as they relate to the use of seatbelts in police vehicles. Specifically, it is anticipated that the State will make reference to such information as evidence that the failure of a Baltimore police officer to seatbelt a detainee during transport constitutes the gross or criminal negligence necessary to establish the crimes of second degree assault, involuntary manslaughter, and reckless endangerment. However, given that the general orders and policies are unique to Baltimore City, they cannot be admitted for this purpose. Accordingly, they are irrelevant to, and must be excluded from, the trial of the Defendant.

In *State v. Pagotto*, the Court of Appeals of Maryland analyzed the legal significance (or insignificance) of an alleged violation of a geographically unique Baltimore Police Department guideline. 361 Md. 528, 550–51 (2000). In *Pagotto*, a Baltimore Police Department sergeant was convicted of involuntary manslaughter and reckless endangerment as a result of a traffic stop

during which his handgun accidentally discharged, killing the driver of the vehicle. *Id.* at 534–38. In order to establish the gross or criminal negligence needed for the conviction, the State relied upon three alleged violations of Baltimore Police Department guidelines. *Id.* at 538–39. One of the guidelines at issue required police officers to place their trigger finger underneath the trigger guard of their weapon when drawn. *Id.* at 544. Sergeant Pagotto had allegedly violated this guideline by placing his finger along the “slide” or side of his weapon, thereby negligently increasing the risk that his finger would slip to a position where it could cause the weapon to accidentally discharge. *Id.*

In evaluating whether the evidence presented by the State was legally sufficient to sustain the conviction, the Court found that the trigger finger placement guideline was unique to Baltimore City. *Id.* at 544–45. Officers in other jurisdictions were permitted to place their trigger finger along the side of their weapon in order to improve their reaction time in critical situations. *Id.* at 544. Moreover, the guideline was recently enacted as it had been published just three years prior to the events at issue. *Id.* In light of this information, the Court adopted the reasoning of the intermediate appellate court and held that any alleged violation of the Baltimore Police Department guideline, “whether considered alone or in combination with *any* other factor, [did] not remotely generate a *prima facie* case of gross negligence.” *Id.* at 550 (emphasis added) (quoting *Pagotto v. State*, 127 Md. App. 271, 310 (1999)). Rather, “at best, [it] amounted to an actionable case in civil negligence.” *Id.*

In elaborating upon the absurdity of the State’s argument that a police officer’s conduct can be permitted in one jurisdiction, while also being deemed criminally negligent in another merely because it violates a departmental guideline, the Court adopted the following language from the intermediate appellate court:

Had a Maryland State Trooper or a Baltimore County Officer, for instance, ridden along with Sergeant Pagotto on February 7, 1996, and engaged in precisely the same conduct that Sergeant Pagotto did, that State Trooper or County Officer would have been acting with complete propriety with respect to the placement of the trigger finger on a weapon. Had Sergeant Pagotto himself placed his trigger finger on the “slide” of his weapon on February 7, 1993, instead of on February 7, 1996, he would then have been acting with complete propriety. Except for a criminal violation of a local municipal or county ordinance, precisely the same act under precisely the same circumstances cannot be a crime in Baltimore City but not a crime in Baltimore County.

Id. at 551 (citations omitted). The Court of Appeals further reaffirmed the intermediate’s court’s finding that the State’s reasoning was “illogical”:

The State’s logic leads to the conclusion that a police officer placing his finger on the slide of the weapon is criminally negligent behavior if committed by a Baltimore City Police Officer in Baltimore City, but acceptable, non-criminal behavior if committed by any other police officer anywhere else in the State. The Court of Special Appeals was correct in concluding that this result is illogical.

361 Md. at 551.

Any Baltimore Police Department general order or policy relating to the use of seatbelts in police vehicles is geographically unique to Baltimore City. Handcuffed detainees are routinely transported in police vans, without seatbelts, in other jurisdictions throughout Maryland. As detailed in a survey published by The Baltimore Sun, “prisoner transport vans used by county law enforcement agencies [in the Baltimore region] generally are not equipped with seat belts.” *See* Alison Knezevich & Pamela Wood, *Most Police Vans in Baltimore Region Lack Seat Belts*, BALTIMORE SUN (May 10, 2015) (attached as Exhibit A). In Baltimore County, for instance, none of the ten vans used by police officers to transport detainees are equipped with seatbelts. *Id.* Additionally, in Carrol County, “only one of the agency’s two vans has seatbelts.” *Id.* Consequently, any alleged violation of a Baltimore Police Department general order or policy relating to the use of seatbelts is unique to Baltimore City, and cannot constitute gross or criminal negligence under *Pagotto*.

This remains true even if the alleged violations are taken into consideration with other factors the State may raise at trial. 361 Md. at 550.

Given that the violation of the general orders and policies cannot constitute gross or criminal negligence, they are inadmissible for the crimes of second degree assault, involuntary manslaughter, and reckless endangerment. In order to be admissible, the general orders and policies must be relevant: they must have a “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.” MD. RULE 5-401. The only potential use of these items with respect to the crimes of second degree assault, involuntary manslaughter, and reckless endangerment, would be to support the State’s contention that a police officer can be held criminally negligent for failing to seatbelt a detainee during transport. However, under *Pagotto*, the general orders and policies cannot be used for this purpose. They are therefore irrelevant to, and must be excluded from, the trial of the Defendant. MD. RULE 5-402 (“Evidence that is not relevant is not admissible.”).

Baltimore Police Department general orders and policies relating to the use of seatbelts in police vehicles must also be excluded from the trial of the Defendant because their “probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury[.]” MD. RULE 5-403. As explained above, the general orders and policies have little, if any, probative value to the Defendant’s trial. Instead, their admission would only serve to mislead the jury into believing that a violation of the general orders or policies constitutes a criminally negligent act when, as a matter of law, it does not.

II. Baltimore Police Department Policy 1114 must be excluded from trial because the State cannot show that the Defendant had actual knowledge of the policy

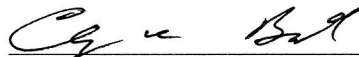
The State may also seek to argue that Baltimore Police Department Policy 1114 as evidence that the Defendant consciously ignored a duty required of his position for the crime of misconduct

in office. However, in order to be relevant to the crime, the State must prove that the Defendant had *actual knowledge* of the Policy. See MPJI-CR 4:23 (“The word ‘corruption,’ as an element of misconduct in office, is used in the sense of depravity, perversion or taint . . . Thus, the conduct must be a *willful* abuse of authority and not merely an error in judgment.”) (emphasis added) (internal citations omitted).

Despite the fact that Policy 1114 was published just nine days prior to Freddie Gray’s arrest, and disseminated just three days before his arrest, it is anticipated that the State will argue that the Defendant was subjectively aware of the Policy. However, the State has failed to identify any expert capable of showing that the Defendant actually received the email, opened the email, and read the new Policy. Absent such evidence, the mere existence of Policy 1114 is irrelevant to the crime of misconduct in office and must be excluded from trial.

WHEREFORE Defendant Brian Rice respectfully requests this Honorable Court to order the preclusion of any and all reference to or argument concerning Baltimore Police Department General Orders and Policies as they relate to the use of seatbelts in police vehicles.

Respectfully submitted,

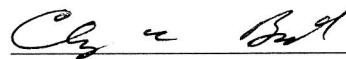


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June, 2016, a copy of Defendant Brian Rice's Motion *in Limine* to Preclude Testimony and Evidence Concerning Baltimore Police Department General Orders and Policies as They Relate to the Use of Seatbelts in Police Vehicles and referenced exhibit were emailed and mailed first class, postage pre-paid, to Janice Bledsoe, Deputy State's Attorney, Office of the State's Attorney for Baltimore City, 120 East Baltimore Street, 9th floor, Baltimore, Maryland 21202.



Chaz R. Ball, Esquire

Most police vans in Baltimore region lack seat belts

By **Alison Knezevich and Pamela Wood**
The Baltimore Sun

MAY 10, 2015, 5:53 PM

Two Baltimore-area police departments say they're reviewing their practices for the transport of prisoners in the wake of Freddie Gray's death from an injury that prosecutors say he suffered in the back of a police van.

The reviews by the Howard and Baltimore County police departments come as a survey by The Baltimore Sun found that prisoner transport vans used by county law enforcement agencies generally are not equipped with seat belts.

City officers involved in Gray's arrest are accused of violating department policy by not placing him in a seat belt. Gray suffered a fatal spinal injury while unrestrained in the van, according to Baltimore State's Attorney Marilyn Mosby.

The Sun's survey found that vans used to transport suspects in Anne Arundel, Harford, Howard and Baltimore counties do not have seat belts. The Carroll County sheriff's office says one of its two police vans has seat belts.

In Howard County, police spokeswoman Sherry Llewellyn said her agency has two vans, which have straps across the lower back of each seat for handcuffed prisoners to hold. Because of Gray's death, Llewellyn said, the department is considering adding new features — possibly padded safety bars, traditional seat belts, or a video monitoring system.

In Baltimore County, suspects arrested on the street usually are driven to a precinct in a police cruiser, where they are placed in seat belts, police spokeswoman Elise Armacost said. The county also owns 10 vans that are sometimes used, none of which have seat belts for prisoners, she said.

"We are currently reviewing complex and ambiguous federal and state law relevant to the wearing of seat belts," Armacost said. She said the department does not support adding seat belts to the vans, saying it could be unsafe for officers to buckle an uncooperative prisoner in such a confined space.

"The issue of prisoner safety is about a lot of things other than seat belts," she said. She pointed to features such as straps suspects can hold behind them, and limits on the number of people who can be in a van.

A lawyer who has represented people who claim they were given "rough rides" by Baltimore police argues that vans lacking seat belts are unsafe for the people in custody — even if a prisoner has a strap to hold onto.

"They're like metal prisons," lawyer Stephen Norman said. "There's metal all over these things. There's bolts sticking out. ... You can slide back and forth."

The federal government has no regulations for transporting prisoners, according to U.S. transportation officials. Such policies are decided by individual law enforcement agencies and private transport companies, based on state laws about occupant protections.

Under Maryland law, passengers in the rear of a motor vehicle must wear a seat belt unless the vehicle is specifically exempted, as school buses are, said Buel Young, a spokesman for the Maryland Motor Vehicle

Administration. Young said he was not aware of an exemption for police vans. Some local departments say they do not believe vans are required to have the belts.

The accrediting body for law enforcement agencies says departments should have policies on the safety of detainees during transport, but does not require the use of seat belts in vans.

Baltimore City Councilman Brandon Scott has said he plans to hold hearings on the state of the city police department's fleet of vans. Police had pledged to replace them last year but scrapped the plan. Officials said last month they are checking all of the vans to make sure they're outfitted with proper restraints and are considering putting cameras inside.

City police officials did not respond to requests about when their policy requiring seat belt use took effect and why they put it in place. The policy is unique in the area.

"I've never actually seen a seat belt in the back of a wagon," said David Rose, second vice president for Baltimore County FOP Lodge No. 4.

Rose said buckling in a prisoner would be impractical in some cases.

"Someone who's fighting you and resisting, it would be a very difficult task to seat belt them," he said.

Not all agencies use "wagons," as the vans are sometimes called.

Maryland State Police do not have vans, said Sgt. Marc Black. A person in custody typically rides in the front seat, next to a trooper, and must be seat belted.

In Carroll County, vans are used only for taking prisoners between the county detention center and the Circuit Court, which are in the same complex, said Cpl. Jon Light, a spokesman for the sheriff's office. Only one of the agency's two vans has seat belts, he said.

During longer rides, sheriff's deputies use a vehicle with seat belts, Light said.

In Harford County, prisoners are taken to the Interagency Processing Center near Bel Air in a police cruiser or SUV "99.9 percent of the time," according to Maj. John Simpson of the county sheriff's office.

Prisoners are put in the back seat, Simpson said. "That keeps you away from the deputy and the deputy away from you," he said.

Prisoners are buckled in seat belts, unless deputies fear they could be injured by a prisoner while they secure the belt, Simpson said.

On the "rare occasion" that a prisoner is disruptive or dangerous, Simpson said deputies use one of the two prisoner transport wagons the department owns. They also use the vans during raids or other times when deputies expect to arrest several people at once.

The vans have aluminum benches on each side of the rear compartment, with straps for prisoners to hold behind their backs. The side-facing seats do not have seat belts.

Simpson said the benches with no seat belts are standard among most police agencies.

"Like most agencies, it's the responsibility of the deputy who has taken someone into custody and the deputies that

assisted. They are responsible for the safety of the prisoners ... as long as they have them in our custody," Simpson said.

In Anne Arundel, prisoners are usually handcuffed behind their backs and seat belted in the front seat of a police cruiser, said police spokesman Lt. T.J. Smith. He said officers can keep a better eye on them there.

If the police car has a barrier between the front and back seats, the prisoner is placed in the back.

After booking at a district station, a contractor operating vans takes prisoners to a district court commissioner for an initial bail review, Smith said. The contractors' vans do not have seat belts, but do have straps for prisoners to hold.

Smith said the incident involving Gray is a "teachable moment" for police officers and a reminder to follow policies on how to safely transport prisoners.

"We think we have good policies and procedures in place to protect prisoners when we place them in our custody," he said.

Baltimore Sun reporter Justin George contributed to this article.

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