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

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MOTION IN LIMINE TO PRECLUDE THE STATE FROM ARGUING THAT MR. GRAY'S DEATH WOULD HAVE BEEN PREVENTED HAD HE BEEN SEAT BELTED, OR IN THE ALTERNATIVE, MOTION TO PERMIT INTRODUCTION OF EVIDENCE THAT HANDCUFFED ARRESTEES CAN UNBUCKLE SEAT BELTS IN POLICE TRANSPORT WAGONS.

Defendant, Lt. Brian Rice, by undersigned counsel, files this Motion in Limine to order the preclusion of argument that Mr. Gray's death would have been prevented had he been seatbelted, or in the alternative, to permit introduction of evidence that handcuffed arrestees can unbuckle seat belts in police transport wagons. In support, Defendant states the following:

1. Defendant, Lt. Brian Rice, is charged with manslaughter and related offenses for the purported failure to seat belt Freddie Gray. There is no allegation, relative to Lt. Rice, that any other act or omission on his part contributed to the injury to or ultimate death of Mr. Gray. (i.e. there is no allegation that Lt. Rice failed to provide medical attention to Mr. Gray).

2. It is anticipated that the State will argue that, had Mr. Gray been seat belted, he would not have suffered his fatal injury. In other words, given the State's position that Mr. Gray must have suffered a high impact fall from a standing position, it is anticipated that the State will

argue that if properly seatbelted, Mr. Gray would not have been able to reach the standing position that allowed his injury.

3. In a manslaughter case, the State has the burden of proving causation: that is, the State must prove that had Mr. Gray been seat belted, beyond a reasonable doubt, his injury would not have happened. *See Pagotto v. State*, 361 Md. 528 (2000); *Pagotto v. State*, 127 Md. App. 271 (1999). In determining the issue of proximate cause in a criminal case, the Court of Special Appeals held that "it is possible for negligence of the deceased or another to intervene between [allegedly criminal] conduct and the fatal result in such a manner as to constitute a superseding cause, completely eliminating the defendant from the field of proximate causation. *Pagotto,* 127 Md. App. at 358 (1999) quoting Rollin Perkins and Ronald Boyce, Criminal Law (3d ed. 1982), pp. 774-825 (emphasis in original).

4. As manslaughter is defined as gross "negligence," the fundamental concepts of the law of negligence apply. The State bears the burden of proving that not only did the Defendant commit an act or admission of gross negligence, but, that such act was the proximate cause of death. *Id., State v. Craig,* 220 Md. At 597, 155 A.2d 684. In the context of the instant case, the State must prove that there were no subsequent or intervening causes of injury on the part of either Mr. Gray or any other individual; moreover the State must prove that no other actor had a "last clear chance" to prevent the injury. If the State cannot prove these facts, they cannot meet their burden of proving beyond a reasonable doubt that the actions of this Defendant were the proximate cause of injury to Mr. Gray.

5. It is the position of the Defense that placing an arrestee in a seat belt in the back of police transport wagon does not prevent that arrestee from unbuckling that seatbelt and taking a standing position. The Defense possesses evidence, both testimonial and demonstrative in nature

that will prove that suspects with flex cuffs on their hands can easily undo a seat belt. In other words, the seatbelt does not prevent an arrestee from getting out of the seat and moving around the van, and being in the same positioning the State contends would have been necessary for the injury to occur.

6. In order for the State to argue that, had Mr. Gray been seat belted, he would not have suffered the injury that led to his death, the fact finder must engage in incredible speculation that Mr. Gray would not have simply unbuckled the safety belt. The Defendant finds support to his argument regarding causation by the fact that at the first stop, when Mr. Gray was placed on the seat, he immediately got out of the seat and began banging around in the van. The Defendant finds additional support to his argument regarding causation by the fact that at the second stop, when Mr. Gray was placed on the floor of the wagon, he immediately got up and was able to once again rock the van as well as kick the back door of the van. Accordingly, the Defense would respectfully request this Honorable Court to preclude the State from introducing such argument or evidence.

7. To the extent that the Court permits the State to suggest, either by way of argument or evidence, that Mr. Gray would not have suffered his fatal injury had he been seat belted, so too must the Defendant be permitted to rebut this speculation. Should the Court permit the fact finder to speculate that the seat belt would have prevented Mr. Gray from getting into a standing position, the Defense must be permitted to present evidence that the seat belts in transport wagons are simple to unbuckle, even for an arrestee wearing flex cuffs. To allow the State to put forth its suggestion that a seat belt would have prevented Mr. Gray from placing himself in the arguably dangerous standing positon, without allowing the fact finder to fully consider how easily he could have gotten to this same position had he been seatbelted would relieve the State

of its burden of proof, ignore the issues of proximate cause, and strip the Defendant of one of his most pivotal defenses.

Conclusion

The State's suggestion that Mr. Gray would not have suffered this injury if he had been belted is absolute speculation and should not be presented to the fact finder; it is irrelevant evidence built upon speculation. Should the State be permitted to ask the fact finder to speculate that Mr. Gray would have remained in the seat belt, and therefore not be injured, the Defense would request that it be permitted to present evidence that being seat belted in no way prevents an arrestee from getting out of the seat and moving about the van.

WHEREFORE, Lt. Brian Rice respectfully requests the exclusion of argument that Mr. Gray's death would have been prevented had he been seatbelted, or in the alternative, to permit introduction of evidence that handcuffed arrestees can unbuckle seat belts in police transport wagons.

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 Exclusion of Argument that Mr. Gray's Death Would Have Been Prevented Had He Been Seatbelted, Or in the Alternative, to Permit Introduction Of Evidence that Handcuffed Arrestees Can Unbuckle Seat Belts in Police Transport Wagons 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

Chaz R. Ball