

RECEIVED

STATE OF MARYLAND

* IN THE

2015 OCT 20 PM 4:21

v.

* CIRCUIT COURT

CIRCUIT COURT

LT. BRIAN RICE

* FOR

BALTIMORE CITY
CRIMINAL DIVISION

Defendant

* BALTIMORE CITY

* CASE NO. 115141035

* * * * *

MOTION TO DISMISS FOR FAILURE TO CHARGE A CRIME

Defendant Lieutenant Brian Rice, by undersigned counsel, hereby moves pursuant to Maryland Rule 4-252(d) to dismiss Count II (second degree assault) for failure to charge a crime. In support thereof, Defendant states the following:

INTRODUCTION

The Defendant is charged with second degree assault based upon his alleged reckless battery of Mr. Gray. Specifically, the charging documents allege that the Defendant failed to seatbelt Mr. Gray in a police transport van, and as a result of this "reckless act," the van was caused to come into harmful contact with Mr. Gray.

The State's charge of second degree assault in this matter constitutes a legally unfounded theory of criminal prosecution that stretches and contorts the crime of assault to an unreasonable end. No court in Maryland has held a defendant criminally liable for assault based upon their alleged misuse of an inanimate object (i.e. a seatbelt) which at some later point in time causes another inanimate object (i.e. the wall of a van) to come into contact with another person. Such an attenuated form of assault simply does not exist.

However, even assuming arguendo that it is an offense, the charging documents in this matter utterly fail to properly charge the crime of second degree assault. In order for the State's

charge to be legally sufficient, the act or omission on the part of the Defendant alleged to have caused the battery must actually be reckless—it must rise to the level of gross or criminal negligence. In this matter, the State’s charge of second degree assault is based solely upon the Defendant’s alleged failure to seatbelt Mr. Gray. However, as explained in Defendant Garrett Miller, Edward Nero, and Lt. Brian Rice’s previously filed motions and replies asking this Court to dismiss the charge of reckless endangerment, it is legally impossible for such an omission to constitute gross or criminal negligence.¹ As a result, the State’s charge of second degree assault is legally insufficient. It charges conduct which cannot, as a matter of law, serve as the basis for the crime. Consequently, Count II (second degree assault) must be dismissed pursuant Maryland Rule 4-252(d).

PROCEDURAL BACKGROUND

On May 21, 2015, a grand jury sitting in the Circuit Court for Baltimore City returned an indictment against the Defendant. With respect to Count II (second degree assault), the indictment reads as follows:

SECOND COUNT

The Jurors of the State of Maryland for the body of the City of Baltimore, do on their oath present that the aforesaid DEFENDANT(S), late of said City, heretofore on or about the date(s) **April 12, 2015**, at the **1600-1700 Blocks of N. Mount Street**, in the City of Baltimore, State of Maryland, did assault **Freddie Carlos Gray, Jr.** in the second degree, in violation of Criminal Law Article, Section 3-203 of the Annotated Code of Maryland; against the peace, government and dignity of the State.

[CR 3-201; CR 3-203; CR 3-206] 1 1415

Indictment, p. 1.

¹ Defendant incorporates by reference, as if fully stated herein, the arguments and authorities contained in Defendant Garrett Miller, Edward Nero, and Lt. Brian Rice’s Motions to Dismiss for Failure to Charge a Crime and subsequent Replies. These documents were filed on September 11, 2015 and October 13, 2015, respectively.

