

STATE OF MARYLAND

Plaintiff

v.

ALICIA WHITE

Defendant

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IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Case No. 115141036

CRIMINAL DIVISION

2016 FEB - 1 P 2:29

RECEIVED FOR RECORD  
CIRCUIT COURT FOR  
BALTIMORE CITY

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**DEFENDANT'S RESPONSE TO STATE'S MOTION IN LIMINE TO  
PRECLUDE EVIDENCE CONTAINED IN EXHIBIT 11 OF THE DEFENDANT'S  
DISCOVERY DISCLOSURES**

Defendant Alicia White, through her counsel, submits this Response to the State's Motion in Limine to Preclude Evidence Contained in Exhibit 11 of the Defendant's Discovery Disclosures; and states in support of the following:

1. On January 8, 2016, the Defendant provided the State Defendant's Disclosures specifically including Exhibit 11 of her Discovery disclosures, a CD containing a 26 video of a demonstration of a subject who is handcuffed and placed inside a police transport van. The video depicts a handcuffed subject taking off his seatbelt while still in handcuffs. On January 14, 2016, defense counsel was contacted by the State that CD was blank and requested an additional copy of the CD as well as information regarding what was on the CD. Defense counsel replied on the same date that the CD contained "a video demonstration of a passenger in a police transport vehicle unbuckling his seatbelt" and informed the State that an additional copy of the video would be sent via email as soon as possible. A copy of the video was sent via dropbox link on January 14, 2016 with a follow up email requesting

whether or not it was received. No follow up email or request for the video was received from the State and therefore the Defendant had no reason to believe that the State had not received the video. It was not until the filing of the State's Motion in Limine, on January 15<sup>th</sup>, that it was expressed that they had not received the video. As a courtesy to the State and the Court an additional copy of the video is attached to this Motion as Defendant's Exhibit 1.

2. The video demonstrates the ability of a person being transported in a police van while restricted in handcuffs to unbuckle his or her seatbelt on their own.
3. The State in their response to the Defendant's Demand for Bill of Particulars provided the following clarification with respect to charge of second degree assault:

As to the Defendant's Demand for particulars as to Count 2 of the Indictment (second degree assault), the State particularizes that the conduct charged occurred between 8:00 a.m. and 10:00 a.m. on April 12, 2015. The State further particularizes as to Count 2 that the Defendant caused physical harm to Freddie Carlos Gray, Jr., who was a hand-cuffed and leg-shackled detainee in the Defendant's custody in her capacity as a government agent, **by failing to secure Mr. Gray with a seatbelt during the process of Mr. Gray being transported in a police vehicle; that the vehicle, a instrumentality of the Defendant and persons with whom she acted in concert, made harmful contact with Mr. Gray as a result of a reckless act of the Defendant and was not accidental;** and that the contact was not legally justified. As to further particularization, the State incorporates its argument outlined as to Count 1 above and avers that State has fully complied with its charging obligations. (See Defendant's Exhibit 2- State's Response to Defendant's Demand for Bill of Particulars)

4. Maryland Rule 5-402 states that all relevant evidence is admissible. Maryland 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

or less probable than it would be without the evidence.” In the Defendant’s case, the State bases their charge of second degree assault off the alleged fact that the Defendant failed to secure the victim in a seatbelt. The video demonstration showing the ability for someone to unbuckle their seatbelt while handcuffed has the tendency to provide reasonable doubt that the Defendant failed to seatbelt the victim as it was possible he could have been placed in a seatbelt and then unbuckled the seatbelt himself.

5. The State alleges the facts show “without dispute that officers never placed Mr. Gray into a seatbelt in the first place,” however their argument is without basis as the evidence alleging that Mr. Gray was never placed in a seatbelt is merely circumstantial based off of testimonial evidence off of witness statements. There are no videos or direct evidence proving that Mr. Gray was never placed in a seatbelt and therefore the video is highly relevant as it makes the existence of the fact Mr. Gray was not placed in a seat belt less probable.
6. The video evidence is also relevant as the Defendant intends to impeach Mr. Gray’s credibility by introduction of his past criminal convictions in part to show that he was familiar with the process based on numerous prior experiences with law enforcement, that he had a habit of engaging in certain conduct when interacting with officers or when in custody, and that he acted in conformity with those habits on the date of the incident. The video demonstration in connection with the impeachment evidence provides for the reasonable conclusion that Mr. Gray’s own actions may have played a role in sustaining his own injury as was also noted in the

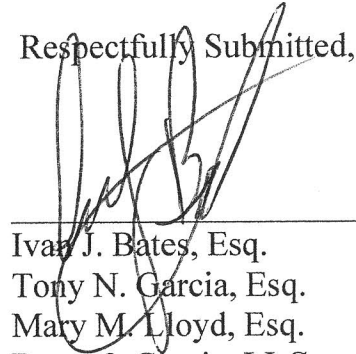
ME report. As the Defendant is charge in relation to Mr. Gray's injuries, an alternate theory as to how and why he sustained those injuries is not only relevant but provides reasonable doubt in the State's case and is essential to the Defendant's case.

7. The video in no way would confuse or mislead the jury and offers no unfair prejudice against the State. The State in their motion to preclude the evidence provides no argument as to how the probative value of the video of the subject unbuckling his seatbelt is outweighed by any potential unfair prejudice, confusion or misleading to the jury as there is no argument to be made.
8. If the Court were inclined to preclude the Defendant's exhibit, in the alternative the Defendant requests that a similar demonstration be allowed in front of the jury during the State's requested examination of the police wagon that transported the victim. As the State argued in their Motion in Limine to Allow Jurors to View and Examine the Police Wagon that Transported the Victim, "the events that occurred in the police wagon while it transported Mr. Gray are significant in both the State's case and in the defense. An examination of the wagon would allow the jury to understand the confines, dimensions, seatbelt placement and overview of the wagon in a way that no set of photographs, video, or witness descriptions could replicate. Examining the police wagon firsthand would be the only way for jurors to appreciate these critical details." See Attached Defendant's Exhibit 3 State's Motion in Limine to Allow Jurors to View and Examine the Police Wagon that Transported the Victim. By allowing the Defendant to make this demonstration in front of the jury

while in the actual van used to transport Mr. Gray, the defendant could show the possibility that Mr. Gray in fact unbuckled his own seatbelt thus placing doubt on the State's theory of the case.

WHEREFORE, the Defendant respectfully requests that this Court deny the State's Motion in Limine to Preclude as Irrelevant Certain Evidence Contained in Exhibit 11 of the Defendant's Discovery Disclosures and allow the Defendant to use as evidence the attached video demonstration of a subject in handcuffs unbuckling his seatbelt while in a police transportation van or in the alternative allow the Defendant to do the demonstration in front of the jury during the State's requested examination of the police wagon that transported the victim.

Respectfully Submitted,



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*Counsel for Sergeant Alicia White*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of February 2016, a copy of the foregoing  
Response to State's Motion for Appropriate Relief was sent by first class mail, postage  
prepaid to:

Michael Schatzow, Chief Deputy State's Attorney  
Office of the State's Attorney for Baltimore City  
120 East Baltimore Street  
Baltimore, Maryland 21202

  
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Ivan J. Bates

STATE OF MARYLAND

v.

ALICIA WHITE

IN THE  
CIRCUIT COURT FOR  
BALTIMORE CITY

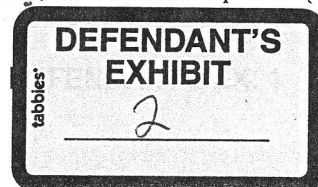
CASE No. 115141036

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**STATE'S RESPONSE TO DEFENDANT'S DEMAND FOR BILL OF PARTICULARS**

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City; Janice L. Bledsoe, Deputy State's Attorney for Baltimore City; and Matthew Pillion, Assistant State's Attorney for Baltimore City; and pursuant to Rule 4-241 responds to the Defendant's Demand for Bill of Particulars as follows:

1. As to the Defendant's Demand for particulars as to Count 1 of the Indictment (involuntary manslaughter), the State particularizes that the conduct charged occurred between 8:00 a.m. and 10:00 a.m. on April 12, 2015. The State further avers that the language used in the Indictment as to Count 1 comports with Article 21 of the Maryland Declaration of Rights and the Fourteenth Amendment of the United States Constitution "by first, characterizing the crime, and second, by so describing it as to inform the accused of the specific conduct with which he is charged." *Dzikowski v. State*, 436 Md. 430, 445 (2013). The Indictment charges that Sergeant White "on or about the date(s) April 12, 2015, at Pennsylvania and North Avenues, in the City of Baltimore, State of Maryland, feloniously did act in a grossly negligent manner and that [the Defendant's] grossly negligent conduct did cause the death of Freddie Carlos Gray, Jr. . . . ." This language clearly charges the Defendant with involuntary manslaughter. *See Maryland Criminal Pattern Jury Instruction 4:17.8* (2013) ("Involuntary manslaughter—Grossly Negligent Act: The defendant is charged with the crime of involuntary manslaughter. In order to convict the defendant of involuntary manslaughter, the State must prove: (1) that



the defendant acted in a grossly negligent manner; and (2) that this grossly negligent conduct caused the death of [the victim].”). The Indictment language also clearly specifies the victim whose death Sergeant White is alleged to have caused, and with the above particularizations, the State has also informed the Defendant of the date, time, and location of the offense charged. Maryland law discourages further specification in a charging document for this crime. Indeed, Criminal Law Article, Section 2-208, states that “[a]n indictment for murder or manslaughter, or for being an accessory to murder or manslaughter, need not set forth the manner or means of death.” *Md. Code Ann., Crim. Law Art.*, § 2-208(b)(2014) (hereinafter “CL”). Moreover, as the Court of Appeals has noted, “[t]his Court has looked with favor upon the general trend of relaxing the formal requirements of indictments to avoid the prolix and often overly technical rules of common law pleading in favor of the shorter and simpler forms.” *Ross v. State*, 308 Md. 337, 346 (1987). The *Ross* case involved an indictment that utilized the legislatively authorized short-form indictment prescribed in what is now CL § 2-208(a), alleging that the defendants “on or about the 9<sup>th</sup> day of May, in the year of our Lord nineteen hundred and eighty one, at Prince George’s County aforesaid, feloniously, willfully and of their deliberately premeditated malice aforethought, did kill and murder [the victim] . . . .” *Id.* at 343. The appellant in *Ross* argued that this language failed to notify him that the State was proceeding on a felony murder theory and, therefore, denied his due process rights to be informed of the charges against him. *Id.* at 342. The Court of Appeals upheld the sufficiency of the charging language, holding that “[a] defendant charged in the statutory language employed in this case is clearly apprised that he may be convicted of murder in either degree, or manslaughter,” noting that the defendant was “told when and where the



homicide occurred, and the identity of the victim.” *Id.* at 345. The Court went on to explain that although the defendant was “not told whether the State will proceed upon one or another, or upon several theories concerning the particular malevolent state of mind alleged to have been present, . . . neither is he entitled to this information as a matter of constitutional due process.” *Id.* Significantly, the Court re-affirmed that “[w]e have held that even where it is proper or desirable to require the State to furnish a defendant with additional facts by means of a bill of particulars, that procedure may not be employed to require the State to select or announce the theory upon which it will proceed.” *Id.* Furthermore, the crime of involuntary manslaughter does not carry a statutory right to a bill of particulars. Absent such a statute, “as a general rule, particulars are not granted as a matter of right.” *Hadder v. State*, 238 Md. 341, 350 (1965); *see also Spector v. State*, 289 Md. 407, 422 (1981) (quoting *Hadder* with approval); *accord Martin v. State*, 218 Md. App. 1, 32 (2014) (citing and quoting *Spector* for the proposition that “while an accused has a right to a charging document that meets constitutional requirements, he ‘is not entitled as of right to particulars’”). The State avers that the Defendant, to the extent she seeks to utilize her Demand for Bill of Particulars to obtain information beyond that which has been described in the Indictment and this Response, should await the State’s response to her Demand for Discovery. A Bill of Particulars provides due process notice of the charges lodged, but that process does not entail presenting the State’s case via public, pre-trial pleadings such that the entire possible jury pool has heard, considered, and potentially prejudged the evidence before the first witness has even entered the courthouse. This is particularly so where, as here, the Defendant has complained about the amount of pre-trial publicity and sought to

remove the case to another jurisdiction. The Defendant must receive a fair trial, even if she now seeks to create the very publicity which she will later argue prevents her from receiving a fair trial.

2. As to the Defendant's Demand for particulars as to Count 2 of the Indictment (second degree assault), the State particularizes that the conduct charged occurred between 8:00 a.m. and 10:00 a.m. on April 12, 2015. The State further particularizes as to Count 2 that the Defendant caused physical harm to Freddie Carlos Gray, Jr., who was a hand-cuffed and leg-shackled detainee in the Defendant's custody in her capacity as a government agent and supervisor of other government agents, by failing to secure Mr. Gray with a seatbelt during the process of Mr. Gray being transported in a police vehicle and at a time when the Defendant knew that Mr. Gray may have been in need of medical care; that the vehicle, an instrumentality of the Defendant and persons under her supervision, made harmful contact with Mr. Gray as a result of a reckless act of the Defendant and was not accidental; and that the contact was not legally justified. As to further particularization, the State incorporates its argument outlined as to Count 1 above and avers that State has fully complied with its charging obligations.

3. As to the Defendant's Demand for particulars as to Count 3 of the Indictment (misconduct in office), the State particularizes that the conduct charged occurred between 8:00 a.m. and 10:00 a.m. on April 12, 2015. The State further particularizes that the Defendant committed misconduct in office by way of nonfeasance in that she corruptly omitted to do an act which is required by the duties of her office. Specifically, the Defendant failed to ensure the safety of Freddie Carlos Gray, Jr., a detainee in the Defendant's custody in her capacity as a police officer and supervisor of other police

officers, by failing to secure Mr. Gray with a seatbelt during the process of Mr. Gray being transported in a police vehicle and by failing to provide Mr. Gray with appropriate medical care. As to further particularization, the State incorporates its argument outlined as to Count 1 above and avers that State has fully complied with its charging obligations.


4. As to the Defendant's Demand for particulars as to Count 4 of the Indictment (reckless endangerment), the State particularizes that the conduct charged occurred between 8:00 a.m. and 10:00 a.m. on April 12, 2015. The State further particularizes that the Defendant recklessly engaged in conduct that created a substantial risk of death and serious physical injury to Freddie Carlos Gray, Jr., who was a hand-cuffed and leg-shackled detainee in the Defendant's custody in her capacity as a government agent and supervisor of other government agents, by failing to secure Mr. Gray with a seatbelt during the process of Mr. Gray being transported in a police vehicle and by failing to provide Mr. Gray with appropriate medical care despite knowing that Mr. Gray may have been in need of medical care. As to further particularization, the State notes that CL § 3-206(d)(5) states that a defendant is only entitled to a bill of particulars "[i]f the general form of charging document described in paragraph (2) of this subsection is used to charge reckless endangerment under § 3-204 of this subtitle . . . ." The State, here, did not use the general form of the charging document, and so the State incorporates its argument outlined as to Count 1 above and avers that State has fully complied with its charging obligations.

5. The State respectfully reserves the right to move to amend this Response pursuant to Rule 4-241(d) and requests a hearing prior to the Court ruling on any exceptions to this Response pursuant to Rule 4-241(c).

Respectfully submitted,

Marilyn J. Mosby

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of June, 2015, a copy of the State's Response to Defendant's Demand for Bill of Particulars was mailed and e-mailed to Mr. Ivan Bates, Esq., and Mr. Tony Garcia, Esq., counsel for the Defendant.

Respectfully submitted,

Marilyn J. Mosby

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STATE OF MARYLAND

v.

ALICIA WHITE

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2016 JAN 15 P 4: 08

IN THE

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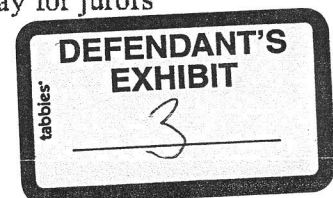
BALTIMORE CITY

CASE No. 115141036

**STATE'S MOTION IN LIMINE TO ALLOW JURORS TO VIEW AND EXAMINE THE  
POLICE WAGON THAT TRANSPORTED THE VICTIM**

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City; Michael Schatzow, Chief Deputy State's Attorney for Baltimore City; Janice L. Bledsoe, Deputy State's Attorney for Baltimore City; and Matthew Pillion, Assistant State's Attorney for Baltimore City; and pursuant to Rule 4-252(d) respectfully moves this Court *in limine* to issue a pretrial order allowing members of the jury to view and examine the interior and exterior of the police wagon that transported the victim, Mr. Gray, on April 12, 2015, and specifying that this procedure shall be conducted in the basement parking garage of Courthouse East. In support of this Motion, the State avers the following:

1. Maryland common law permits a trial court to order that "the trier of fact go and look at an object or place which is either impractical or impossible to bring to the courtroom" when the trial court is "reasonably certain that it will aid the trier of fact in reaching its verdict and [when] it is impracticable or inefficient to present the elements to [the jury] by maps, photos, or diagrams." *Waddell v. State*, 65 Md. App. 606, 610-11 (1985) (internal citations omitted).
2. Here, the events that occurred in the police wagon while it transported Mr. Gray are significant in both the State's case and in the defense. An examination of the wagon would allow the jury to understand the confines, dimensions, seatbelt placement, and overview of the wagon in a way that no set of photographs, video, or witness descriptions could replicate. Examining the police wagon firsthand would be the only way for jurors



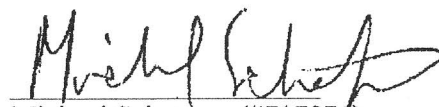
to appreciate these critical details. Furthermore, witness testimony and other evidence would be more easily understood and put in proper perspective if jurors were given the opportunity to examine the police wagon.

3. Obviously, it would be impracticable for the jury to examine the wagon in the courtroom, but a viable alternative for the jury to view the wagon without causing undue delay would be to bring the wagon to the basement parking garage of Courthouse East.


4. If the Court permits a jury view of the police wagon, the State recommends that the Court follow the same viewing procedure used in the trial of *State of Maryland vs. William Porter*.

Wherefore, the State respectfully requests that this Court issue a pretrial order allowing members of the jury to view and examine the interior and exterior of the police wagon that transported the victim, Mr. Gray, on April 12, 2015, and specifying that this procedure shall be conducted in the basement parking garage of Courthouse East.

Respectfully submitted,  
Marilyn J. Mosby




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**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of January, 2016, a copy of the State's Motion *in Limine* to Allow Jurors to View and Examine the Police Wagon that Transported the Victim was mailed and e-mailed to:

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