

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND

vs.

Case Number:

115141035

BRIAN RICE,

DEFENDANT.

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Trial on the Merits - Verdict)

Baltimore, Maryland

Monday, July 18, 2016

BEFORE:

HONORABLE BARRY G. WILLIAMS, Associate Judge

APPEARANCES:

For the State:

JANICE BLEDSOE, ESQUIRE
MICHAEL SCHATZOW, ESQUIRE
JOHN BUTLER, ESQUIRE
SARAH AKHTAR, ESQUIRE

For the Defendant:

MICHAEL BELKSY, ESQUIRE
CHAZ BALL, ESQUIRE
MICHAEL DAVEY, ESQUIRE

* Proceedings Digitally Recorded *

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T A B L E O F C O N T E N T S

P a g e

The Court's Ruling (Not Guilty)

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P R O C E E D I N G S

(10:06:00 a.m.)

THE CLERK: All rise. The Circuit Court for Baltimore City, Part 31, will start the morning session. The Honorable Barry G. Williams presiding.

THE COURT: Good morning. Everyone, please be seated. Call the case.

MR. SCHATZOW: Good morning, Your Honor. This is the case of the State of Maryland versus Brian Rice. Number 115141035. Mike Schatzow on behalf of the State together with Deputy State's Attorney, Janice Bledsoe and Assistant State's Attorneys, John Butler and Sarah Akhtar and our law clerk, Michael Fiarenso, Your Honor.

THE COURT: Good morning.

MR. SCHATZOW: Good morning, Your Honor.

MR. BELSKY: Good morning, Your Honor. Michael Belsky on behalf of Lieutenant Rice, who is present standing to my left. Also, on behalf of the defendant is Chaz Ball, Mike Davey and behind us are our law clerks Marty Spirlene, Adam Davey. Good morning, Your Honor.

THE COURT: Good morning. All right. The court will issue it's ruling.

The State has charged the defendant with Involuntary Manslaughter, Reckless Endangerment and Misconduct in Office. As the finder of fact, and in determining the

1 outcome of the charges, the court must be guided by the
2 law that pertains to the pending charges.

3 In order to convict the defendant of involuntary
4 manslaughter, the State must prove that the defendant
5 acted in a grossly negligent manner and that this grossly
6 negligent conduct caused the death of Freddie Gray.

7 In order to convict the defendant of reckless
8 endangerment, the State must prove that the defendant
9 engaged in conduct that created a substantial risk of
10 death or serious physical injury to another; that a
11 reasonable person would not have engaged in that conduct
12 and that the defendant acted recklessly.

13 Finally, in order to convict the defendant of
14 misconduct in office the State must prove that the
15 defendant was a public officer, that the defendant acted
16 in his official capacity and that the defendant corruptly
17 failed to do an act required by the duties of his office.
18 The State has the burden of proving, beyond a reasonable
19 doubt, each and every element of the crimes charged. If
20 the State fails to meet that burden for any element of
21 any of the charged offenses, this court is
22 constitutionally required to find the defendant not
23 guilty of that crime.

24 As would be the case if this matter was tried before
25 a jury, as trial judge and the finder of fact, this court

1 has, and I am paraphrasing Maryland Pattern Jury
2 Instruction 2:04, an obligation "to consider and decide
3 this case fairly and impartially." The court must
4 "perform this duty without bias or prejudice as to any
5 party." This court cannot "be swayed by sympathy,
6 prejudice or public opinion."

7 At this time, and all times, it is critical for this
8 court not to base any decision on public opinion or
9 emotion.

10 In order to assess this case the court finds it
11 helpful to discuss some of the facts presented at trial.
12 All times mentioned occurred on the morning of April 12,
13 2015. Based on a call placed over KGA by the defendant,
14 Mr. Gray was stopped by police officers in the area of
15 Presbury and Mount. Throughout trial, the area was
16 referred to as stop 1. A review of the Kevin Moore video
17 (State's exhibit 51), the KGA transcript (State's exhibit
18 56), the CCTV video of the area around stop 1 (exhibit
19 57), and a still shot of the CCTV video (exhibit 58C)
20 shows that Officer Garrett Miller twice called for a
21 wagon over KGA at approximately 8:43a.m.

22 At the same time he noted that Gilmor Homes was
23 starting to empty out. The defendant was on KGA both
24 before and after Miller's transmissions. The wagon
25 arrived and the defendant was on the scene within

1 minutes. Mr. Moore and Mr. Brandon Ross were within 5 to
2 10 feet of Miller, Officers Edward Nero, Zachary Novak
3 and Caesar Goodson when Mr. Gray was placed into the
4 wagon at stop 1. As the officers attempted to place Mr.
5 Gray in the wagon he was yelling and complaining about
6 his handcuffs being too tight. Mr. Gray did not complain
7 about any back or neck pain.

8 At stop 1 the defendant was not involved in placing
9 Mr. Gray into the wagon but interacted with citizens,
10 including Mr. Ross, by telling them to clear the area.
11 At last 11 citizens were in the area at the time Mr. Gray
12 was on the ground, picked up, walked to and placed into
13 the wagon. Some citizens were yelling, some were not.
14 Mr. Ross stated that at stop 1, the defendant threatened
15 him and told him to leave the area. Mr. Ross left and
16 called 911. At some point he heard screaming through the
17 Gilmore Homes and went to Mount and Baker, which has been
18 identified as stop 2.

19 It is there that he saw Mr. Gray out of the wagon,
20 on the ground and on his knees. The defendant, along
21 with other officers, picked up Mr. Gray and placed him on
22 the floor of the wagon. Mr. Ross testified that he could
23 hear Mr. Gray inside the vehicle and he believed that Mr.
24 Gray was kicking while inside the vehicle. He was angry
25 because he believed that Mr. Gray had been tased by

1 officers.

2 Officer Novak testified that he responded to Stop 1
3 and helped Officer Nero pick up Mr. Gray and take him to
4 the wagon. Mr. Gray did not assist them in placing him
5 in the wagon. Novak stated that Mr. Gray was not seat-
6 belted at stop 1 because there was a crowd and for
7 officer safety they wanted to get out of the area. He
8 heard Mr. Gray yelling and rocking the wagon.

9 According to Officer Nero he, Miller and the
10 defendant met after Mr. Gray was placed in the wagon at
11 stop 1. This meeting is corroborated by exhibit 69A
12 which shows the three of them on a CCTV still photo at
13 8:45:50. According to Nero, it was at this meeting that
14 the defendant stated shackles should be placed on Mr.
15 Gray and that the wagon should go to the Western District
16 instead of Central Booking. He was not asked, and did
17 not say, why the decision was made. The three proceeded
18 to meet the wagon at Mount Street. When the wagon driver
19 opened the door, Mr. Gray was seated. Nero testified
20 that Mr. Gray was flailing, screaming and either actively
21 or passively resisting when he came out of the wagon.
22 People were screaming that the officers had injured Mr.
23 Gray. The defendant and Miller took Mr. Gray out of the
24 wagon. Miller retrieved his cuffs, replaced them with
25 flex cuffs and placed shackles on Mr. Gray. At this

1 point, Mr. Gray had gone limp so, to get him back into
2 the wagon, the defendant got into the wagon and pulled
3 Mr. Gray by the shoulders while Nero had his hands on Mr.
4 Gray's legs.

5 Officer William Porter testified under immunity
6 granted by the State. Because the State chose not to ask
7 questions concerning stops 1 and 2, the defense requested
8 permission to present evidence of Porter's testimony from
9 his trial in December of 2015 pursuant to MD. Rule 5-804
10 (b) (1). After a hearing this court ruled that under the
11 circumstances presented, it would be appropriate to allow
12 the defendant's request and allowed into evidence defense
13 exhibit 18. The State sought to present other portions
14 of Porter's testimony from that trial. The defense did
15 not object and without the necessity of a ruling from
16 this court, the court received State's exhibit 91.

17 At his trial, Porter stated that at stop 2 he was
18 there when Mr. Gray was placed into the wagon but did not
19 assist because, either he was not looking or there were
20 enough officers on the scene. He then proceeded to
21 assist with crowd control and approached Mr. Ross who was
22 seeking to talk to a supervisor because of what was
23 happening to Mr. Gray. He informed Mr. Ross if the
24 defendant was a supervisor. Porter said that he walked
25 back to the van where he heard bumping and noted that the

1 wagon was shaking side to side.

2 Mr. Ross is responsible for State's exhibit 53,
3 which has been referred to as the Ross video, which shows
4 Mr. Gray being placed into the wagon and some of the
5 other activity at stop 2. At the beginning of the video,
6 Mr. Ross is cursing and loudly voicing his displeasure
7 that Mr. Gray had been arrested. The court notes that
8 there were other individuals in the area when this
9 occurred. At 7 seconds of the video, Mr. Gray is on the
10 ground. At 10 seconds, Porter arrives and at 13 seconds,
11 Nero kneels down and grabs Mr. Gray's legs. At 22
12 seconds, the defendant steps out of the van after having
13 grabbed Mr. Gray under the arms and placing him on the
14 floor of the wagon.

15 Simultaneously an unknown female voice asks "is he
16 alright?" Mr. Ross says "No." At 34 seconds, Mr. Ross
17 asks Porter for a supervisor and when told that the
18 defendant was a supervisor, wanted someone else. At 1
19 minute and 01 second, Mr. Ross says to Porter, in a loud
20 voice, that the officers had taken Mr. Gray out of the
21 wagon, took off his handcuffs and tased him. Ross stated
22 that he had it on camera and again expressed his
23 displeasure with the actions of the officers. At 1
24 minute and 10 seconds, he advised Porter that the
25 officers would get no respect if they "do that." At 1:39

1 there are a number of unknown voices, some telling Mr.
2 Ross to walk. At 1 minute and 45 seconds, a female voice
3 says "you can hear him banging in the police car. You
4 can hear him kicking." At 2 minutes, an unknown male
5 voice says what sounds like "jail, jail, jail." At 2
6 minutes and 18 seconds, an unknown male voice says what
7 sounds like "smoke this dumbass" and at 2 minutes and 21
8 second, a different male voice states "I'll bust all
9 three of them" At 3 minutes and 11 seconds, an unknown
10 female voice states " you could hear him kicking the
11 cruiser. You could hear him screaming."
12 Mr. Ross acknowledged that no one used a taser on Mr.
13 Gray. This court is satisfied that in the circumstance
14 of the moment Mr. Ross actually believed, based on a
15 sound or sounds that he heard, Mr. Gray had been tased by
16 police officers although now it is clear that it did not
17 happen.

18 After reviewing the video evidence solely from that
19 perspective, the court noted that between 8:47, when the
20 defendant comes in view of the van, and 8:53, there
21 were, at various times, anywhere from 0 to 9 citizens on
22 the street in range of the officers at stop 2.

23 Nero and Porter called it a crowd of people at stop 2.

24 The State showed snippets of time when no one was at the
25 scene and others that showed people in the area.

1 There is no finite definition of crowd. To one
2 officer, 3 people may be a crowd; to 3 other officers, 9
3 may not be a crowd. It is a matter of perspective. As
4 this court has noted its willingness to acknowledge that
5 in the circumstances of the moment, Mr. Ross' perception
6 that Mr. Gray was tased was believable for him, this
7 court is equally willing to acknowledge from the
8 viewpoint of Nero and Porter that there may have been
9 issues with what they called the crowd. This is
10 especially true given the concern being voiced by Mr.
11 Ross, and others, which was projected in a loud and
12 animated manner.

13 Based on the evidence presented, it is clear to this
14 court that emotions and tensions ran high on April 12,
15 2015 at Mount and Baker. It is clear that law
16 enforcement and citizens alike were yelling and upset.
17 It is clear that information did not flow efficiently
18 between law enforcement and citizens. While there are
19 different views as to what happened, and a clear
20 disagreement on the number of people at any given time,
21 none of individuals who testified indicated that it was a
22 quiet time at Mount and Baker while Mr. Gray was being
23 placed into the wagon.

24 During closing arguments, this court noted that the
25 parties would like this court's assessment of the scene

1 at Mount and Baker to be made in a vacuum based solely on
2 their view of the evidence. The reality of what was
3 going on at Mount and Baker is not particularly clear cut
4 or one-sided. The defendant's decision to place Mr. Gray
5 inside the van without seat-belting him must be viewed
6 from that perspective.

7 The question then is, did the defendant have a duty
8 to seatbelt Mr. Gray after he placed him in the wagon?
9 If not, then the analysis must end. This court does
10 find, that as a police officer with a number of years of
11 service, this defendant was required to follow the
12 policies set forth by the Baltimore City Police Department
13 and as the officer who pulled Mr. Gray into the van, may
14 have a had a duty to seatbelt him at stop 2.

15 Of course the question then becomes, did the
16 defendant have any discretion to not seatbelt Mr. Gray.
17 If K14 was in effect, he may have. If he was aware of
18 Policy 1114, he likely lacked discretion.

19 Through exhibit 11, the State was able to prove that
20 on April 9, 2015 the defendant did in fact receive the
21 email that included the change in policy from K-14 to
22 1114. Through Exhibit 8, which is Police Commissioner's
23 memorandum 19-99, the State proved, as of 2014, officers
24 had an obligation to ensure that prisoners transported in
25 prisoner transportation vehicles were secured with a seat

1 belt.

2 What the State has not shown to this court is that
3 the defendant actually read 1114 or for that matter 19-
4 99. The State also failed to present to the court any
5 evidence that the defendant knew about the change from
6 K14 to 1114.

7 Finally, the State has failed to present any
8 evidence whatsoever that 19-99 negated the discretion
9 that the defendant had to not seatbelt under K14.

10 State's exhibit 5 is General Order A-2, which is
11 titled "DEPARTMENTAL WRITTEN DIRECTIVES". Under the
12 General Information section it states in part that
13 "employees shall be responsible for complete familiarity
14 with and adherence to written directives, general orders
15 and Police Commissioner Memoranda. As directed, written
16 directives shall be maintained by employees in their
17 General Manuals." It goes on to say that "Digital
18 versions of General Orders and Police Commissioner's
19 Memoranda shall be distributed in a (PDF) file, via
20 email. Simultaneously, hard copies of directives shall be
21 printed and distributed to each member. New directives
22 shall require all supervisors to communicate the content
23 of the new directive to their subordinates at roll call."

24 According to Captain Martin Bartness, Chief of Staff
25 to Commissioner Davis, A-2 was the procedure in place on

1 April 12, 2015, but he does not know whether A-2 was
2 followed or whether 1114 was ever read at roll call and
3 did not know whether the defendant was ever aware of it.
4 Furthermore, he testified that there was no policy in
5 place that required officers to open emails daily or
6 weekly. In fact, at the time there was no requirement at
7 all to open emails.

8 There was no evidence presented to this court that
9 at any time prior to April 12, 2015, that the defendant's
10 General Orders were ever updated pursuant to the policy
11 presented in General Order A-2. There is no evidence that
12 the defendant was ever given any information at roll call
13 and there was no information presented that he ever gave
14 information out at roll call on April 9, April 10, April
15 11 or April 12, 2015 concerning Policy 1114.

16 The State would have this court look at Policy 1114
17 and presume that in the short time after having been
18 implemented, the defendant knew he no longer had any
19 discretion concerning the seat-belting of a detainee. The
20 State wants this court to presume and/or assume that the
21 defendant was aware of the new policy, possibly because
22 he was a supervisor. This court's findings and
23 determinations cannot rest upon presumptions or
24 assumptions. In this criminal proceeding, this court
25 cannot apply strict liability standards in order to reach

1 the State's desired result. The State did not prove the
2 defendant was on notice of the new policy.

3 Since this court has found that the State has not
4 proven that the defendant was on notice of the new
5 policy, it follows that on the date Mr. Gray was
6 arrested, the defendant was governed by K14 which
7 afforded him discretion when determining whether to seat
8 belt Mr. Gray. Since the evidence shows that the
9 defendant did not seatbelt Mr. Gray at stop 2, the next
10 questions the court must consider are why not and whether
11 the failure to do so was unreasonable? And finally, if
12 the court finds the failure to seatbelt Mr. Gray was
13 unreasonable, the court must consider whether the failure
14 to seatbelt Mr. Gray at stop 2 rose to the level of
15 criminal conduct.

16 The State alleges that the failure to seat belt Mr.
17 Gray, combined with his injuries that he suffered while
18 in the van resulting in his death, constitute Involuntary
19 Manslaughter. In order to convict the defendant of
20 involuntary manslaughter the State must prove
21 that the defendant acted in a grossly negligent manner;
22 and that this grossly negligent conduct caused the death
23 of Mr. Gray.

24 The term "grossly negligent" means that the
25 defendant, while aware of the risk, acted in a manner

1 that created a high risk to, and showed a reckless
2 disregard for, human life. The evidence shows that Mr.
3 Gray, while in the custody of the police at stop 1, was
4 yelling as he entered the wagon. The evidence also shows
5 that after Mr. Gray was place in the wagon at stop 1, the
6 defendant had a meeting with Officers Miller and Nero who
7 were on the scene at stop 1 and had the initial
8 interaction with Mr. Gray.

9 The court was not provided any evidence concerning
10 what, if anything the officers told the defendant about
11 Mr. Gray's behavior and actions at stop 1. What is in
12 evidence is that the defendant, during the discussion,
13 made the decision to have Mr. Gray shackled and
14 transported to the Western District instead of Central
15 Booking. There are a number of possibilities the court
16 could entertain, some that are innocent and some that are
17 not. However, the burden of proof rests with the State,
18 and the court's imaginings do not serve as a substitute
19 for evidence.

20 At stop 2, Mr. Gray was removed from the wagon,
21 recuffed, shackled and placed in the wagon without being
22 seat-belted by the defendant. At the same time, various
23 citizens arrived at stop 2 and the environment becomes
24 tense, as evidenced by the Ross video which made it clear
25 that based on their perception of how the officers were

1 treating Mr. Gray, some citizens were concerned.

2 With the individuals in the area, having ordered Mr.
3 Gray to Mount and Baker to switch cuffs, a decision was
4 made to place shackles on him. The court does not know
5 why that decision was made. It could have been based on
6 the conversation between Miller, Nero and the defendant.
7 It could have been made independently. The State would
8 have court to simply infer that it was for reasons that
9 were criminal. In that vein, the State also seeks to
10 have this court find that the failure to seatbelt, under
11 the circumstances, was grossly negligent - not a mistake,
12 not an error in judgment, but a grossly negligent act,
13 that effectively, on its face should rise to the level of
14 wanton and abandoned indifference to human life required
15 to meet the standard of gross criminal negligence.

16 Based on the evidence presented, the court does not
17 make that finding. Furthermore, this court does not find
18 that the State has proven that the defendant was aware
19 that the failure to seatbelt created a risk of death or
20 serious physical injury to Mr. Gray under the facts
21 presented. The State presented no evidence to this court
22 concerning the defendant's training or knowledge
23 concerning the issue of death or serious physical injury
24 occurring in police transport vehicles.
25 Even had that information been available and presented,

1 this court would note that the State produced no evidence
2 that the defendant, had he had been aware of the danger,
3 consciously disregarded the risk when he did not seatbelt
4 Mr. Gray.

5 Finally, even if the court found that the failure to
6 seatbelt Mr. Gray was grossly negligent conduct, which
7 again the court does not, the State failed to prove
8 beyond a reasonable doubt that the failure of the
9 defendant to seatbelt Mr. Gray at stop 2 was the conduct
10 that caused the death of Mr. Gray. For those reasons the
11 court finds the defendant not guilty on the charge of
12 Involuntary Manslaughter.

13 The State alleges that the failure of the defendant
14 to seat belt Mr. Gray once he was placed back in the
15 wagon at stop 2 rises to the level of reckless
16 endangerment. In order to convict the defendant of
17 reckless endangerment, the State must prove that the
18 defendant engaged in conduct that created a substantial
19 risk of death or serious physical injury to another.
20 That a reasonable person would not have engaged in that
21 conduct and that the defendant acted recklessly.

22 The defendant acted recklessly if he was aware that his
23 conduct created a risk of death or serious physical
24 injury to another and then he consciously disregarded
25 that risk.

1 Reckless endangerment focuses on the actions of the
2 defendant and whether or not his conduct created a
3 substantial risk of death or injury to another. The
4 crime occurs when the actions are found to be
5 unreasonable under the circumstances presented. It does
6 not focus on the end result which can be, and in this
7 case was, charged as a separate crime. That crime was
8 Involuntary Manslaughter.

9 Since again the conduct is the failure to seatbelt
10 Mr. Gray, the analysis is similar to the analysis for
11 Involuntary Manslaughter except there is no need for the
12 court to determine whether the failure to seatbelt led to
13 the death of Mr. Gray.

14 Md. Code Crim. Law, Section 3-204(a)(1) states that
15 a person may not recklessly engage in conduct that
16 creates a substantial risk of death or serious physical
17 injury to another. However, Section 3-204(c)(1) states
18 that (a)(1) does not apply to conduct involving the use
19 of a motor vehicle as defined in Section 11-135 of the
20 Transportation Article. Section 11-135 defines a motor
21 vehicle as a vehicle that is self-propelled.

22 This Court finds that a police wagon or van
23 constitutes a motor vehicle and that the reckless
24 endangerment statute would prohibit prosecution of

1 conduct arising from the use of a motor vehicle in this
2 case, a police transport wagon. This court finds that
3 the Reckless Endangerment charge should fail as a matter
4 of law because the alleged reckless conduct is failing to
5 seat belt Mr. Gray in a vehicle.

6 In order for the defendant's failure to seatbelt Mr.
7 Gray to rise to the level of reckless conduct and create
8 a risk of death or serious physical injury, there has to
9 be some use and movement of the vehicle. The simple
10 placement of a person in a vehicle that is not used,
11 without seat-belting him, cannot and does not constitute
12 a crime.

13 Therefore, the alleged misconduct on the defendant's
14 part for failure to seatbelt would not fall within the
15 conduct proscribed by this statute. Nevertheless, the
16 court will review Reckless Endangerment solely in the
17 context of the failure to seat belt.

18 Again, the State has failed to show that the
19 defendant was aware, not that he should have been aware,
20 but that he was aware that his conduct created a risk of
21 death or serious physical injury. The State also failed
22 to show that the defendant, even if he was aware of the
23 risk, consciously disregarded that risk. So even looking
24 at this charge solely on the issue of failing to seatbelt

1 Mr. Gray, this court finds that the State has failed to
2 meet the burden required and the verdict on the charge of
3 Reckless Endangerment is not guilty.

4 This court finds that the State has failed to prove
5 that the defendant's failure to seat belt Mr. Gray, under
6 the circumstances presented at stop 2, was unreasonable.
7 Given that the State did not charge the defendant with
8 failing to render medical aid, and the State's failure to
9 show that the defendant's failure to seatbelt Mr. Gray
10 was grossly negligent, there is no need the for this
11 court to assess the medical evidence and testimony
12 presented at trial in reference to the charges.

13 That said, while preparing this opinion the court
14 did review all the medical evidence and testimony
15 presented by the State and the Defense and agree with the
16 parties that Mr. Gray was not injured while being taken
17 into custody at Presbury and Mount. The evidence shows
18 that he received his injuries at some point after he was
19 placed in the van.

20 Finally, there is the misconduct charge stemming
21 from the stop on Mount and Baker. The State alleges that
22 the defendant failed to ensure Mr. Gray's safety when the
23 defendant failed to secure him with a seatbelt during the
24 process of Mr. Gray being transported in a police vehicle

1 while in police custody. In order to convict the
2 defendant the State must prove that the defendant was a
3 public officer, that he acted in his official capacity;
4 and that he corruptly failed to do an act required by the
5 duties of his office.

6 There is no question that elements one and two of
7 the misconduct charge are met since the defendant was a
8 public officer acting in his capacity as a law
9 enforcement officer on the day of Mr. Gray's arrest.

10 The State asserts the defendant failed to do an act
11 required by his office, and that failure to act is
12 corrupt behavior that warrants a conviction for
13 misconduct.

14 While this court has already determined that the
15 defendant is not guilty of reckless endangerment based on
16 the facts presented, the court still must determine
17 whether the State has provided sufficient evidence to
18 prove beyond a reasonable doubt that the defendant
19 corruptly failed to do an act that is required by the
20 duties of his office. The comments to the Maryland
21 Pattern Jury Instructions note that the committee chose
22 not to define or explain "corrupt" or "corruptly"
23 believing that the words communicate their meaning better
24 than a definition would. A review of relevant case law

1 shows that a police officer corruptly fails to do an act
2 required by the duties of his office if he willfully
3 fails or willfully neglects to perform the duty. A
4 willful failure or willful neglect is one that is
5 intentional, knowing and deliberate. A mere error in
6 judgment is not enough to constitute corruption, but
7 corruption does not require that the public official
8 acted for any personal gain or benefit.

9 The court is satisfied that pursuant to General
10 Order K-14, the defendant had a duty to assess whether or
11 not to seatbelt Mr. Gray in the back of the van. While
12 this court notes there is a duty to assess, the State
13 retains the burden to present evidence that the defendant
14 corruptly failed to follow his duty, not that the
15 defendant made a mistake, and not that the defendant made an
16 error in judgment. Rather, the State bears the burden to
17 show that the defendant corruptly failed to follow his
18 duty. The law is clear that the standard for the State
19 to secure a criminal conviction is higher than mere civil
20 negligence.

21 The State did not offer the defendant's academy
22 records or training records into evidence. The court is
23 mindful of the fact that as a discovery sanction, the
24 State was precluded from presenting certain documents

1 into evidence and that those documents may or may not
2 have been relevant to the defendant's training concerning
3 seat-belting a prisoner in a transport wagon. But again,
4 the inability to present that evidence was based on a
5 discovery violation by the State and the State must bear
6 responsibility for its failure to provide discovery.

7 The State's choice not to, or inability to, produce such
8 evidence would leave the court to merely assume facts,
9 which of course, it cannot do.

10 In order for there to be a conviction the State must
11 show not simply that the defendant failed to do an act
12 required by the duties of his office but that the
13 defendant corruptly failed to do an act required by the
14 duties of his office. Here the duty stems from K-14, a
15 Baltimore City Police Department General Order. The
16 commission of a crime is not, and cannot be, simply
17 equated to failure to follow a general order of the
18 police department. The court notes that the duty does not
19 stem from a federal, state or local statute or law. Case
20 law makes it abundantly clear that a violation of a
21 general order may be an indicator that there is a
22 violation of criminal law, but failing to seatbelt a
23 detainee in a transport wagon is not inherently criminal
24 conduct. More must be proven for a conviction. As

1 stated at the outset, the burden is on the State to prove
2 the elements of each charge. It is not the defendant's
3 job to disprove the allegations.

4 Here, the failure to seatbelt may have been a
5 mistake or it may have been bad judgement, but without
6 showing more than has been presented to the court
7 concerning the failure to seatbelt and the surrounding
8 circumstances, the State has failed to meet its burden to
9 show that the actions of the defendant rose above mere
10 civil negligence. What the court cannot do, based on the
11 evidence presented, is find that that the defendant's
12 failure to seatbelt Mr. Gray, based on all that went on
13 at Mount and Baker, rose to the level of corruptly
14 failing to do an act required.

15 For all the reasons stated, this court finds that
16 the State has failed to meet its burden of proving that
17 the defendant is guilty beyond a reasonable doubt of
18 misconduct in office. Therefore the verdict is not
19 guilty on all counts. This court is in recess.

20 THE CLERK: All rise.

21 (The proceeding concluded at 10:34:45.)