

STATE OF MARYLAND

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IN THE

v.

*

CIRCUIT COURT

*

FOR BALTIMORE CITY

Mr. Innocent

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CRIMINAL DIVISION

*

Case No.

DEFENDANT'S THIRD MOTION TO EXCLUDE SURVEILLANCE FOOTAGE

The Defendant, Mr. Innocent, by undersigned counsel, , hereby moves this Court to exclude the surveillance video obtained from 521 Chateau Avenue because the State possessed the raw or complete footage from the video for over a year, but failed to provide it to defense even after defense counsel repeatedly requested the same. Mr. Innocent makes this Motion pursuant to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; Articles 21, 24, 25 and 26 of the Maryland Declaration of Rights; Rule 4-263 of the Maryland Rules of Criminal Procedure; Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972); Kyles v. Whitley, 514 U.S. 419, 437 (1995); State v. Williams, 392 Md. 194 (2006); and Williams v. State, 364, Md. 160 (2001).

In support of this Motion, Mr. Innocent states as follows:

BACKGROUND

1. Mr. Innocent was arrested for the above-captioned matter on or about November 5, 2018.
2. He has been held without bail for a year, awaiting trial.
3. On December 31, 2018, counsel for Mr. Innocent filed her appearance, her request for discovery, and a supplemental request, seeking information related to any officer involved with this case who had been investigated for perjury or other related conduct. See Attached, Exhibit 1.
4. Two months later, the State filed its initial disclosures. Several items were notably missing, including but not limited to DNA evidence that had been analyzed, recorded statements that

- were taken, crime lab evidence that was collected, and unedited surveillance footage.
5. Seeking the missing discovery, defense counsel emailed the State on April 8, 2019, requesting, among other things, the unedited surveillance footage from 521 Chateau Avenue that captured the shooting on September 27, 2018. See Attached Exhibit 2.
 6. The footage from this address is the linchpin of the State's case. As a result, the defense wanted to examine and inspect the entirety of the footage.
 7. Rather than giving defense counsel the entirety of the footage, the State provided various individual clips from a resident's surveillance system, but never provided defense with the continuous raw footage, which counsel for Mr. Innocent suspected existed.
 8. The State entirely failed to respond to the April email requesting the raw footage.
 9. As a result, Mr. Innocent filed a second supplemental discovery request on May 17, 2019, seeking again, "**all unedited surveillance footage captured from 521 Chateau Avenue.**" See Attached, Exhibit 3.
 10. On August 28, 2019, Mr. Innocent filed a Motion to Compel. See Attached, Exhibit 4.
 11. In response to defense counsel's Motion to Compel, the State provided voluminous discovery on the eve of specially set trial number one. More specifically, the matter was set for trial on September 6, 2019, and on that day, numerous outstanding discovery items were furnished to defense counsel.
 12. On Monday, September 9, 2019, Judge ABC found multiple discovery violations, the State conceded the same, and Judge ABC continued the case as a sanction (which was not a sanction the defense was seeking).
 13. Since this case has been indicted, the State has filed at least twenty-five (25) supplemental discovery disclosures. Not one of them contained the full, unedited, raw footage from 521 Chateau Avenue, which is the footage that allegedly shows the murder.
 14. During the first week of October, defense counsel went to 521 Chateau Avenue with co-counsel and a private investigator in an effort to obtain the raw footage for themselves.
 15. At that visit, it was learned that the raw footage was no longer in existence and apparently only existed for a short time.
 16. On October 28, 2019, counsel for defense was permitted to inspect the physical evidence at the Baltimore Police Department (BPD) headquarters.
 17. During the inspection, counsel observed a DVD that allegedly contained the raw surveillance footage from 521 Chateau Avenue.

18. The DVD appears to have been secured into evidence on September 27, 2018, over one year ago.
19. Counsel for Mr. Innocent asked Detective Richard Moore if he had a DVD player that would allow her to view the footage. Detective Moore said “yes and no.” When defense counsel sought clarification, he explained he had a DVD player at his computer, but he would not let defense counsel use it “because he wanted to be done with” the evidence review.
20. The Assistant State’s Attorney then asked a law clerk from the State’s Attorney’s Office to bring a mechanism from the State’s Attorney’s Office to BPD to play the DVD.
21. Counsel was then able to view the DVD, which contained the raw footage counsel has been requesting for several months.
22. The DVD, which had been logged into evidence on September 27, 2018 is in a different format than what was provided to defense counsel in discovery.
23. The raw footage that the police department obtained but did not provide to defense covers a one hour period of time, contains time stamps, and includes information and a “codec player” that was never given to defense counsel.
24. The footage provided to defense counsel is different from the raw footage because the footage given to defense counsel consists of individual clips, they do not have any time stamps on them, they do not show continuous footage for an hour, they do not play through the player which matches the owner’s security system, they do not show all the cameras running at the same time, they do not show the “no recording” label when the cameras are not recording.
25. What was given to defense counsel hides or does not reveal the fact that, among other things: (1) the timestamps are off during the time of the shooting; 2) the system is not actually motion activated, and (3) the cameras are not functioning properly because they miss several minutes of footage without explanation.
26. What the BPD and SAO have in their possession is what defense counsel was entitled to in January, thirty (30) days after Mr. Innocent’s first appearance, and what counsel has requested several times since then.
27. The State and BPD purposefully or negligently withheld this evidence.
28. The raw footage is exculpatory because it shows glitches in the system and inexplicable gaps in the recording that last several minutes.

29. The raw footage is also exculpatory because it consists of everything the officers and the SAO reviewed.
30. Detective Moore made a material misstatement to the grand jury, and the withheld video contains impeachment evidence that conflicts with Detective Moore's sworn testimony.
31. More precisely, Detective Moore testified in front of the grand jury and wrote in the sworn statement of probable cause that both Mr. Innocent and the shooter approach the victim's car prior to the shooting. (The ASA makes the same assertion in his response to defense counsel's Bill of Particulars).
32. The withheld raw footage shows that never happened and the officer fabricated that statement.
33. That false statement likely secured an improper indictment.
34. The raw footage contains no image of Mr. Innocent ever approaching the victim's car.
35. Even though defense counsel had a portion of the footage, and various clips, she would have been limited in her ability to confront and cross examine Mr. Innocent's accusers because the raw footage, which never shows Mr. Innocent approach the car, was withheld.
36. The raw footage is also exculpatory because it demonstrates that the video was not working properly and thus creates issues regarding authentication.
37. When defense counsel asked the State how this happened, how defense counsel did not get this from the beginning, especially when counsel was asking for it, the ASA responded, "I gave you what they (meaning BPD) gave me."
38. The failure to produce the raw footage and the codec player amounts to a discovery violation that ought to be sanctioned.

ARGUMENT

I. THIS COURT SHOULD EXCLUDE THE SURVEILLANCE VIDEO BECAUSE THE STATE OR THE POLICE WILLFULLY OR NEGLIGENTLY WITHHELD THE EXCULPATORY EVIDENCE

This Court should exclude the surveillance footage because the State failed to produce it, even on request, and that failure to produce violated the defendant's constitutional right to a fair trial, to prepare and present a defense, to confront and cross examine his accusers, and to effective assistance of counsel. Further, the State plainly violated Rule 4-263, a sanction is appropriate, this is not the first discovery violation, and a continuance is insufficient.

Rule 4-263 begins with the requirement that all parties “*shall exercise due diligence* to identify all of the material and information that must be disclosed under this Rule.” Md. R. 4-263(c)(1) (emphasis added). The rule goes on to require that, within thirty (30) days of the defendant’s first appearance and “[w]ithout the necessity of a request, the State’s Attorney *shall* provide to the defense:” any relevant information regarding electronic surveillance, exculpatory and impeachment evidence, in any form; and any computer generated evidence. *Id.* at (d)(5)(6)(7), and (9). The State’s compliance with the rules, as explained by Judge Battaglia in *Williams v. State*, 364 Md. 160 (2001), “is never discretionary, as the Maryland Rules of Procedure have the force of law.” *Williams v. State*, 364 Md. 160, 171 (2001), abrogated on other grounds by *State v. Jones*, 2019 WL 4051708 (Md. Aug. 28, 2019).

Expanding on Rule 4-263 and the State’s obligations under the rule and the constitution, Chief Judge Bell wrote that the duty under *Brady*, and more locally, *Sleeper*, applies to all members of the prosecution staff, including the police. *State v. Williams*, 392 Md. 194, 219, 896 A.2d 973, 987 (2006). In other words, the State cannot skirt its obligations to disclose by asserting that the police were the only ones who had the information. As Chief Judge Bell went on to explain, if the State were not responsible to disclose material known only to the police, it would encourage the police to wait until after trial before making important disclosures: “As noted in *Swanson*, regarding a prosecutor’s disclosure of exculpatory evidence during a trial as opposed to diligently investigating and disclosing such evidence to defense counsel prior to trial, ‘If a prosecutor’s response, ‘I told you as soon as I knew,’ is accepted to permit police withholding of evidence material to guilt or punishment, police would be encouraged to withhold such evidence from prosecutors until after trial.” *State v. Williams*, 392 Md. 194, 222, 896 A.2d 973, 989 (2006) (internal citation marks omitted).

The *Williams* Court went on to explain that the prosecutor has a duty to seek information and disclose it. Prosecutors, in fact, have special responsibilities, especially when it comes to “requested or obviously exculpatory evidence”: “[T]he duties of a prosecutor to administer justice fairly, **and particularly concerning requested or obviously exculpatory evidence**, go beyond winning convictions. The State has a unique role in the criminal justice process. Although it is indeed the prosecutor of all criminal charges, the State, should not just be in the business of obtaining guilty verdicts.” *State v. Williams*, 392 Md. 194, 222 (2006) (emphasis added) (internal quotation marks and citation omitted).

The pronouncements in *Williams*, though profound and clear, were not new. The Court was merely extending the holdings from other bedrock constitutional cases such *Kyles v. Whitely*, 514 U.S. 419 (1995). In *Kyles*, the government withheld evidence that was known only to the police, until

after trial. The United States Supreme Court found this to be unacceptable, and pronounced that the prosecutor has an affirmative duty to seek out and disclose favorable evidence:

This in turn means that the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police. But whether the prosecutor succeeds or fails in meeting this obligation (whether, that is, a failure to disclose is in good faith or bad faith, *see Brady*, 373 U.S., at 87, 83 S.Ct., at 1196–1197), the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable.

Kyles v. Whitley, 514 U.S. 419, 437-38 (1995)

But, what is even more important about the *Kyles* decision is that the State in that case had asked for a more lenient rule, that it not be held accountable for information known only to the police, and the Supreme Court rejected that request:

The State of Louisiana would prefer an even more lenient rule. It pleads that some of the favorable evidence in issue here was not disclosed even to the prosecutor until after trial, Brief for Respondent 25, 27, 30, 31, **and it suggested below that it should not be held accountable under *Bagley* and *Brady* for evidence known only to police investigators and not to the prosecutor.**¹¹ To accommodate the State in this manner would, however, amount to a serious change of course from the *Brady* line of cases.

Kyles v. Whitley, 514 U.S. 419, 437-38 (1995)

In this case, the full video footage, known to the police, was or should have been known to the State's Attorney. As the Court of Appeals clearly held in *Robinson v. State*, 354 Md. 287, 309 (1999), documents in the police department's possession are also in the State's Attorney's Office's possession. *Robinson v. State*, 354 Md. 287, 309 (1999). Whether the footage was locked in evidence control at police headquarters or held within the walls of the State's Attorney's Office is a distinction without a difference. Both agency had physical and constructive possession of the footage.

Moreover, the State has an affirmative duty to do its due diligence, without request from defense, and in this case, the defense even asked for the withheld evidence, and it did so on more than one occasion. The State need only call evidence control to see the evidence at the police department. Defense counsel cannot do the same.

Next, the video is exculpatory. The withheld video demonstrates that the system was not working correctly, that images freeze, disappear, and fail to get recorded. It even shows that precisely at the time of the murder, the timestamps are not correct. By holding on to this evidence and not disclosing it, the State has prohibited defense counsel from adequately exploring how the video system worked, whether it was functioning properly, why it sometimes said “not recording:” why if it was motion activated, it recorded without motion, why when sometimes it was not recording it said “no recording” and why at other times, it just jumps ahead several minutes.

Withholding that information prevented the defense from expanding on these issues and developing the argument that the video should be excluded because it is unreliable and cannot be authenticated. This puts defense counsel at a severe disadvantage.

Defense counsel asked for this information for nearly a year. It has been in the State and the police department’s possession the entire time, and there is no justification for the State’s failure to produce. The only explanation offered by the State was that it gave defense counsel everything the police gave the State. In other words, whatever version of the video the State got from the police never caused the State to investigate further, even though defense counsel was specifically requesting more. In addition, the original video clips given to defense inexplicably freeze at certain places. When the raw footage plays in codec player, these clips indicate that the system stopped functioning. This information is exculpatory. It was withheld, and thus, this Court should exclude its introduction at trial.

CONCLUSION

The State failed to produce the raw footage and codec player associated from the surveillance footage captured on Chateau even though it is required to be disclosed under Rule 4-263 and defense counsel specifically requested it. The video is exculpatory, and important. It is the lynchpin, and actually, the entirety of the State’s case. Mr. Innocent is prejudiced by the State’s failure to produce the raw footage and the codec player. And as 4-263 allows, the Court is within its boundaries to exclude the evidence in order to ensure a fair trial. As a result, Mr. Innocent moves

this Court to exclude the surveillance footage from 521 Chateau Avenue because the State violated the discovery rules, and in doing so, violated Mr. Innocent's right to due process, effective assistance of counsel, to prepare and present a defense, and to confront and cross examine his accusers. Besides exclusion, no other remedy is sufficient. Thus, Mr. Innocent asks this Court to adhere to the precise rules of discovery; find that the State violated the rules of discovery; and impose the most appropriate sanction.

Respectfully submitted,

Attorney for Defendant Innocent

I HEREBY CERTIFY that on this 30th day of October, 2019 a copy of the foregoing Motion to Exclude was Emailed to Assistant State Attorney at, and hand delivered to 120 E. Baltimore Street, Baltimore, MD 21202.

STATE OF MARYLAND

v.

MARK INNOCENT

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IN THE

CIRCUIT COURT

FOR BALTIMORE CITY

CRIMINAL DIVISION

Case No.

* * * * *

ORDER OF COURT

It is this _____ day of _____ 2019, by the Circuit Court for Baltimore City, Maryland hereby:

ORDERED, that Defendant’s Motion to Exclude is hereby granted; or
a hearing is scheduled for _____, 2019.

JUDGE

IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND

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vs.

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CASE NO. XXXXXX

Defendant

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DEFENDANT’S MOTION FOR SUBPOENA FOR TANGIBLE EVIDENCE FOR INTERNAL AFFAIRS FILES PURSUANT TO MARYLAND RULES 4-263 AND 4-264

The above-named defendant, XXXXXX, by and through undersigned counsel, XXXXXX, Assistant Public Defender, respectfully requests that this Honorable Court issue a Subpoena for Tangible Evidence for the production of the Baltimore City Police Department’s (BPD) complete Internal Affairs Division’s (IAD) files pertaining to Sergeant Kenneth Ivery (G495) and Officer Eduardo Pinto (E573). These files are likely to contain evidence that may be usable at trial, as well as impeachment evidence, which the State is required to disclose under the Fifth and Sixth Amendments to the United States Constitution, Article 21 of Maryland’s Declaration of Rights, Brady v. Maryland, 373 U.S. 83 (1963), Kyles v. Whitley, 514 U.S. 419 (1995), Fields v. State, 432 Md. 650 (Md. 2013), and Maryland Rules 4-263 and 4-264. Mr. XXXXXX further requests that these records be provided to defense counsel for an in-camera inspection.

STATEMENT OF FACTS & PROCEDURAL HISTORY¹

On _____, [insert the facts of your case demonstrating that Ivery & Pinto are likely to be called as witnesses at your client’s trial.] See Sworn Statement of Probable Cause at _____, Attached as Exhibit 1.

Because Sergeant and Officer Pinto were the . . . they are likely to be called as a witnesses at

¹ The following statement of facts is based on the statement of probable cause provided in this case. Mr. XXXXXX cites these facts strictly for purposes of this motion and does not admit them for any other purpose.

trial. Thus, the State has an obligation to provide all exculpatory and impeachment evidence, including that evidence that is contained within his IAD files.

BASIS FOR IAD INSPECTION

On June 22, 2017, a superseding indictment was filed charging Officers Daniel Hersl, Wayne Jenkins, and Marcus Taylor with various RICO violations. See Superseding Indictment, attached as Exhibit 2. One particular violation, as stated in the superseding indictment, occurred on January 24, 2014, which appears to involve Officers Ivery, Eduardo Pinto, Marcus Taylor, and Maurice Ward. Id.; see also Whiting Statement of Probable Cause, attached as Exhibit 3.

Specifically, the superseding indictment states that Officers Ivery, Ward, and Taylor arrested S.W.² and executed a search warrant on his residence. See Exhibit 2. Upon execution of the search warrant, Officers Ward, Taylor, Pinto, and Ivery recovered over \$10,000 from the residence (the Money), more than \$3,000 of which was stolen by the officers. Id. In an effort to conceal their illegal conduct, Officer Ward authored, and Officer Ivery approved, a false incident report. Id. The false incident report swore out that all property recovered was recovered by Officer Taylor and “another Detective”³ and was submitted to evidence control, when, in reality, the officers stole at least \$3,000 from S.W. Id. Based on the aforementioned conduct, it is highly likely that Sergeant Ivery and Officer Pinto have been investigated by Internal Affairs.

Additionally, a motion for subpoena for tangible evidence requesting the complete IAD records for Sergeant Ivery and Officer Pinto were previously litigated in front of the Honorable John S. Nugent in State of Maryland v. Michael Lionel Smith, Case Number 116341016. See Smith Order, attached as Exhibit 4. In response, the Honorable John S. Nugent ordered the production

² “S.W.” has been determined by defense counsel to be “Shawn Whiting.” See Exhibit 3

³ Upon review of the statement of probable cause submitted in Mr. Whiting’s case, the “Detective” mentioned above, who assisted Officer Taylor in submitting the Money to ECU at least \$3,000 short, was Officer Pinto. See Exhibit 3 at 5.

all IAD files pertaining to both Sergeant Ivery and Officer Pinto for an in camera inspection. Id. The IAD files for both officers are still under review.

Finally, while the State may argue that the officers' IAD files are not relevant because the State does not now intend to call them as witnesses, but this argument is mislaid as both officers **description of officers' impact in your case – Ex. observed the suspected criminal activity in Mr. XXXXX's case, participated in the arrest, and was responsible for discovering, transporting, and submitting the suspected narcotics**. Whether he carried out his duties to properly secure the scene and whether he actually observed what was alleged in the sworn statement of charges is certainly key evidence for use at trial. The State cannot escape its obligations under Brady, the Constitution, and the Maryland Rules by simply claiming that they are not calling Sergeant Ivery and Officer Pinto as witnesses. See Williams v. State, 392 Md. 194 (Md. 2006).

As a result, and based on the following additional argument, this Court ought to grant Defendant's Motion for Subpoena for Tangible Evidence for Internal Affairs Files for the complete IAD file pertaining to Sergeant Ivery and Officer Pinto.

ARGUMENT

I. MR. XXXXX IS ENTITLED TO ACCESS AND REVIEW SERGEANT IVERY AND OFFICER PINTO'S IAD FILES BECAUSE THEY ARE LIKELY TO REVEAL USABLE EVIDENCE; THEY CONTAIN BRADY MATERIAL; AND DEFENSE COUNSEL IS IN THE BEST POSITION TO DETERMINE RELEVANCY

As the Court of Appeals explained in Fields v. State, 432 Md. 650 (Md. 2013), the analysis regarding whether criminal defendants are entitled to access a law enforcement officer's IAD file is a multi-step process. First, the reviewing court must determine whether the IAD files are likely to reveal evidence that may be usable at trial. Id. at 668. During this phase of the analysis, the Fields court admonished that "a court . . . may deny a defendant any form of access to the material only if nothing in it, 'in anyone's imagination, [could] properly be used in defense or lead to the discovery of

usable evidence." Id. at 670 (quoting Zaal v. State, 326 Md. 54, 88 (1992)). After making that determination, the court must then rule on the manner of inspection, in other words, whether the court should review the records in camera, or whether the defendant should participate in that inspection. Id.

As will be explained further, Mr. **XXXXXX** should be afforded access to Sergeant Ivery and Officer Pinto's IAD files because they are key witnesses for the State in Mr. **XXXXXX**'s trial and their IAD files are likely to reveal usable evidence. Moreover, as the defense counsel is in the best position to judge the importance of the impeachment material at issue, this Court should allow counsel for Mr. **XXXXXX** the opportunity to view the records.

A. Mr. **XXXXXX is Entitled to Access Sergeant Ivery and Officer Pinto's IAD Files Because Those Files Are Likely to Lead to Usable Evidence at Trial**

Mr. **XXXXXX** ought to be afforded access to Sergeant Ivery and Officer Pinto's complete IAD files because they are likely to lead to the discovery of usable evidence. In Fields, the Honorable Mary Ellen Barbera, writing for a unanimous Court of Appeals, held that the need to inspect IAD records should be interpreted broadly: "[O]nly when the records are not even arguably relevant and usable should the court deny the defendant total access to the records." Id. at 668. Put another way, Judge Barbera explained that the trial court should only exclude IAD material from the parties' review when it "could not, in anyone's imagination, properly be used in defense or lead to discovery of usable evidence." Id. at 668-69. The Fields case is remarkable in that the court reversed the defendants' Baltimore City Circuit Court murder convictions, after a multi-week jury trial, on the sole basis that the trial court had refused to order production of the two detectives' IAD records, who had testified at trial. Given that Sergeant Ivery and Officer Pinto's IAD files are likely to lead to the discovery of usable evidence, and they are likely to be called to testify in Mr. **XXXXXX**'s case, this Court should order production of the IAD files to avoid any unnecessary miscarriage of justice.

The Fields holding, while expansive and impressive, is not new. In fact, the Fields Court merely expanded on Maryland law, settled decades ago in Zaal v. State, 326 Md. 54 (Md. 1992). In that case, the Court of Appeals explained that a defendant should be allowed access to confidential records when there is “a reasonable possibility that review of the records would result in discovery of usable evidence.” Id. at 81. The Zaal decision was based on the understanding that a criminal defendant’s right to confront his accusers and to prepare a defense trumps any purported confidentiality of personnel records. A “criminal defendant may be entitled to discovery of confidential personnel records where the defendant’s right to confront and cross-examine the witnesses against him outweighs the interests of the party holding the protection of the confidential records.” Id. at 81-87. Even if the officers’ IAD files are considered confidential records within the Maryland Public Information Act, a fact which the above-named defendant does not concede, a record deemed confidential does not “guarantee [its] insulation from . . . disclosure.” Id.; see also Fields, 432 Md. at 678, (McKenneth, J., concurring) (“If other law requires disclosure of a record, the record is disclosable under the [M]PIA even if it falls within one of the [M]PIA's many categories of exceptions to disclosure . . . the compulsory process of the subpoena itself might constitute ‘other law’ that overrides the [Maryland Public Information Act] exception”).

Where a defendant demonstrates a “need to inspect,” or, in other words, “a reasonable possibility that review of the records would result in discovery of usable evidence,” the court then must, at a minimum, review the records in-camera. The court can choose to view the records alone, in the presence of counsel, or it could allow counsel for both parties to review the records themselves as officers of the court. Id. at 667. Given the Court of Appeals’ expansive directive in Fields, this is certainly a case in which there is a need to inspect the records because they are likely to reveal usable evidence.

More specifically, the records will shed light on Sergeant Ivery and Officer Pinto's prior bad acts that the State should be required, without request, to provide. As the Fields court stated, the "Maryland Rules authorize trial courts to allow cross-examination of a witness about a prior bad act, not resulting in conviction, that relates to the witness's credibility, so long as the cross-examiner can establish 'a reasonable factual basis' for the inquiry." Fields v. State, 432 Md. 650, 671 (Md. 2013); see also Sessoms v. State, 357 Md. 274 (2000); Md. R. Evid. 5-608(b).

B. Defense Counsel, as the Advocate, Should be Able to Examine the Contested Files

After establishing a need to inspect, as the defendant has done in this case, the court must then determine the manner of inspection. When deciding how to proceed with the in-camera inspection, "the court should take into account, among other factors, 'the degree of sensitivity' of the material to be inspected; the strength of the showing of the 'need to inspect'; whether the information sought is readily identifiable; considerations of judicial economy, etc.'" Fields, 435 Md. at 668 (quoting Zaal, 326 Md. at 87). "A strong need to inspect weighs in favor of allowing counsel to participate in the review as officers of the court." Id.

In this case, the defendant has carried his burden of showing a need to access the IAD files. Thus, the only question that remains is how this court will choose to conduct the inspection. Because there is a strong need to inspect in the present cases, defendant's attorney requests to either participate with the court's in-camera inspection, or to be able to view the materials independently as an officer of the court.

First, the information is not particularly sensitive because it relates to Sergeant Ivery and Officer Pinto's conduct as police officers, not in their private life. Other than reporting conduct, which may be unbecoming of a law enforcement officer, there is nothing remarkably sensitive about the facts at issue.

Second, there is a strong need to inspect because the information contained in the

documents goes directly to the veracity and performance of key witnesses. While the police department has an interest in protecting confidential records, “that confidentiality interest must yield . . . to the defendant's interest in having an opportunity to mount a defense and confront the witnesses against him.” Id. at 672 (“[W]hen due process concerns have been involved, the confidentiality of [internal investigation] records” yields to those concerns); see also Davis v. Alaska, 415 U.S. 308, 320 (1974); Robinson v. State, 298 Md. 193, 308 (1983). Sergeant Ivery and Officer Pinto are likely to provide key testimony at Mr. XXXXXX’s trial, and the information contained in his IAD files go directly to his credibility. See Fields, 432 Md. at 670-71. In addition to the due process and confrontation rights that require inspection, the prosecution is obligated to make the records available to the defendant under Brady v. Maryland, 373 U.S. 83 (1963), and Maryland Rule 4-263(d)(b).

Third, the files the defendant seeks are concise and readily available. There is no implication that allowing counsel to participate in an in camera review would impose a strain on judicial economy or an undue burden on the prosecution to produce the files.

Finally, the most compelling reason defense counsel should to be permitted to participate in the records review is that there is no other advocate for the defendant like his own counsel. As the Fields Court noted, a judge, while scrupulous, is not an advocate for the defendant, and may overlook or fail to conclude that certain aspects of the file would be instrumental to the defense:

the court must approach its task cognizant of the fact that it is not an advocate and, in most instances, will not, and, indeed, cannot be expected, to discern all the nuances or subtleties which may render an innocuous bit of information relevant to the defense. Whether there is impeaching information in a file is not easily determined. Indeed, whether information is impeachment evidence, or may otherwise be characterized, often depends upon the circumstances, including context, and, to a large extent, the perception of the person interpreting it. Consequently, well-prepared defense counsel--one who has spoken extensively with his client, developed a strategy for the trial and is familiar, thoroughly, with the State's case--would then be able to bring the advocate's eye to the review of the records, thus,

protecting the interest of the defendant in ensuring that relevant, usable exculpatory or impeachment evidence is discovered. . . . Moreover, by having the benefit of counsel's input on the critical questions of relevance and admissibility, the court is enabled to rule more responsibly.

Fields, 435 Md. at 668 (citations and internal quotation marks omitted, alteration in original).

Because the information is not particularly sensitive, there is a strong need to inspect, the files are readily available, and the defense attorney is in the best position to determine the importance of the information as they are the only individual(s) aware of the intricacies and nuances of the defendant's case, this Court ought to order the aforementioned officers' entire IAD files to be produced for undersigned counsel to review.

C. Mr. XXXXX is Also Entitled to Sergeant Ivery and Officer Pinto's IAD Records Under The Due Process Clause, Brady V. Maryland, and Maryland Rule 4-263

In Brady v. Maryland, 373 U.S. 83 (1963), the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady, 373 U.S. at 87. The Supreme Court has made clear that the duty under Brady exists irrespective of whether the accused has made a request, see United States v. Agurs, 427 U.S. 97, 103-04 (1976); it extends to impeachment evidence, as there is no distinction between impeachment and exculpatory evidence; see Kyles v. Whitley, 514 U.S. 419, 433 (1995); Williams v. State, 416 Md. 670, 695 (2010); and it extends even to evidence known *only* to police investigators. Whitley 514 U.S. 419, 437-38 (1995) ("the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police."); accord Youngblood v. West Virginia, 547 U.S. 867, 869-870 (2006); Williams v. State, 416 Md. 670, 695 (2010); Robinson v. State, 354 Md. 287, 309 (1999) (holding that IAD records are in the prosecutions constructive possession).

The obligations under Brady are not to be taken lightly; rather they are the columns atop which a fair and just criminal process is built. Taking heed, Maryland codified the State's Brady obligations in Rule 4-263 of the Maryland Rules, requiring disclosure to the defendant, without request, of "[a]ll material or information in any form, whether or not admissible, that tends to impeach a State's witness . . ." Md. Rule 4-263(d)(6). This obligation extends to information that is not in the possession of, or even known to, the State's Attorney: "The obligations of the State's Attorney . . . extend to material or information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case." Md. Rule 4-263(c)(2); see also Robinson, 354 Md. at 309. As the Supreme Court clearly explained, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." see Kyles v. Whitley, 514 U.S. 419, 437 (1995). Thus, the prosecution simply cannot contend that they are unaware of the Brady material related to Sergeant Ivery and Officer Pinto, nor can they shirk their responsibility by claiming they are not calling them as witnesses. The observations of Sergeant Ivery and Officer Pinto form the basis for the prosecution, and their truthfulness is now at issue.

Moreover, our Court of Appeals has determined that IAD records are deemed in the possession of the prosecution, regardless of whether the prosecutor even knows those records exist:

In [Maryland], each major police department has an IAD division. Consequently, because that division is a part of the police, its records are in the possession of the police. And if the police is an arm of the prosecution, it follows that the records are also constructively in the possession of the prosecution; records in the possession of the police are not rendered not in possession simply because they are made confidential and are not, on that account, shared with, or readily available to, the prosecution.

Robinson, 354 Md. at 309.

In the instant case, the defendant is affirmatively seeking evidence that would tend to impeach the State's key witnesses. The records at issue likely deal with Sergeant Ivery and Officer

Pinto's prior bad acts. Without question, the defense is entitled to access those records, and it is not sufficient for the State to hide behind confidentiality of police personnel records. Additionally, the State is ill-equipped to make the determination as to the relevance of these records on behalf of the defendant. As the Court of Appeals explained in Fields, the defense attorney is best situated to determine the relevance or importance of information in the IAD files, as the defense attorney is the "one who has spoken extensively with h[is] client, developed a strategy for the trial and is familiar, thoroughly, with the State's case—[who] would then be able to bring the advocate's eye to the review of the records." Fields v. State, 432 Md. 650, 668 (2013) (internal quotation marks omitted). Defense counsel should be able to review the file and determine what evidence would be usable at trial, or, at a minimum, this court should review the records and make that decision.

Finally, the State cannot escape disclosure by hiding behind the Maryland Public Information Act, especially when no MPIA request is at issue. The defendant seeks these records through his attorney's subpoena power through the process of discovery, not through a general request as a member of the public. As the United States District Court explained in Mezu v. Morgan State University, 269 F.R.D. 565 (D. Md. 2010), the MPIA must give way to applicable discovery rules in litigation. More specifically, the Mezu Court held that the MPIA applies to the general public seeking records, it is not a tool that litigants can use to supplant the applicable laws of discovery. See id. at 576.

In reaching its conclusion, the Mezu court explained that "[t]he MPIA is modeled on the Federal Freedom of Information Act (FOIA), 5 U.S.C. § 552, and therefore decisions interpreting the federal statute are persuasive in interpreting counterpart provisions of the MPIA." Id. (citations and internal quotation marks omitted). The Mezu Court then turned to a Maryland Court of Appeals decision, which likewise explained that "the purpose of the Maryland PIA is 'virtually identical' to that of the Federal FOIA and . . . except where there may be some relevant differences in two

statutes, we may, and should, look to persuasive interpretations of the Federal Act.” Id. (internal quotation marks omitted) (citing Stromberg Metal Works, Inc. v. Univ. of Md., 395 Md. 120, 909 A.2d 663, 668 n. 2 (2006)). The Mezu Court then pointedly explained that the FOIA “does not displace discovery in domestic civil litigation under the Federal Rules of Civil Procedure.” Id. (citing In re Application of Mohamed Al Fayed, 36 F.Supp.2d 694, 695 (D.Md.1999); Baldrige v. Shapiro, 455 U.S. 345, 360 n. 14 (1982) (NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 143 n. 10 (1975))). Instead, the Court explained, “FOIA exceptions only . . . permit the withholding . . . of information from the public generally.” Id. But, in litigation, the court explained, “the need of a litigant for the material must be taken into account, and may require disclosure where the FOIA itself would not.” Id. Applying the same logic the records at issue in Mezu, the court held that the records were discoverable pursuant to the rules of discovery. See id. The same is certainly true here.

In summary, the prosecution possesses Brady material as to Sergeant Ivery and Officer Pinto, and the State is required to provide those documents. As a result, Mr. XXXXXX respectfully moves this Court to issue a subpoena for tangible evidence for the complete IAD records pertaining to Sergeant Ivery and Officer Pinto, as it is clear that those documents are likely to yield evidence that is usable at trial.

CONCLUSION

Having met his burden of demonstrating a need to inspect the IAD files, Mr. XXXXXX respectfully requests that this Honorable Court permit defense counsel to inspect the IAD files of Sergeant Ivery and Officer Pinto.

A hearing is hereby requested on Defendant’s Motion for Subpoena for Tangible Evidence for Internal Affairs Files Pursuant to Maryland Rules 4-263 and 4-264.

Respectfully submitted,

XXXX, Esq.
Assistant Public Defender
1400 E North Avenue
Baltimore, MD 21213
Phone (410) 878-8726
XXXX@opd.state.md.us

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ___ day of _____, 2018, a copy of the foregoing A hearing is hereby requested on Defendant’s Motion for Subpoena for Tangible Evidence for Internal Affairs Files Pursuant to Maryland Rules 4-263 and 4-264, was hand delivered to,XXXXX

XXXX, Esq.
Attorney for Defendant

IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND

*

vs.

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XXXXX

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CASE NO. XXXXXX

Defendant

*

*** **

ORDER

Upon review of the foregoing Defendant's Motion for Subpoena for Tangible Evidence for Internal Affairs Files Pursuant to Maryland Rules 4-263 and 4-264., it is this _____ day of _____, 20____,

HEREBY ORDERED that a hearing is scheduled for the _____ day of _____ 20____;

OR in lieu of a hearing;

_____ The State is ORDERED to provide defense counsel with the complete IAD files for Officer Sergeant Ivery and Officer Pinto; or

_____ A subpoena for tangible evidence for Sergeant Ivery and Officer Pinto's entire IAD files will be hereby issued by this Honorable Court, for production to and inspection by counsel for Mr.

XXXXXX.

JUDGE

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND,

Vs.

XXXXXXXXXX,

Defendant.

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Case No. XXXXXX

SUPPLEMENTAL DISCOVERY REQUEST

Pursuant to Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972); and Rule 4-263 of the Maryland Rules of Criminal Procedure, Mr. XXXXX hereby requests the State to provide the following:

1. Any and all information indicating whether any of the law enforcement employees, sworn and civilian, involved with the above-captioned matter are or have been investigated by any law enforcement agency, including but not limited to the State's Attorney's Office for Baltimore City and the Baltimore Police Department, for misconduct in office, tampering with evidence, perjury, or any other conduct that is honesty related.

2. Any and all internal affairs records regarding all law enforcement employees, sworn and civilian, related to the above-captioned matter, that are required to be disclosed pursuant to Rule 4-263; Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972).

XXXXX
Attorney for Defendant
201 St. Paul Place
Baltimore, MD 21202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of ____, 2018, a copy of the foregoing motion was hand delivered and e-mailed to Assistant State's Attorney _____, Office of the State's Attorney for Baltimore City, 120 E. Baltimore Street, Baltimore, MD 21202, XXXXX@statorney.org.

XXXXXX

STATE OF MARYLAND

v.

[REDACTED]

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IN THE
CIRCUIT COURT
FOR BALTIMORE CITY
CRIMINAL DIVISION
Case No [REDACTED]

**MOTION TO COMPEL OR EXCLUDE &
CERTIFICATE OF GOOD FAITH**

The Defendant, [REDACTED], by undersigned counsel, Deborah Katz Levi, Assistant Public Defender, and pursuant to Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972); and Rule 4-263 of the Maryland Rules of Criminal Procedure, hereby files this Motion to Compel evidence or to preclude the evidence and the State's witnesses related to the same.

In support of this Motion, [REDACTED] states the following:

1. On or about [REDACTED], [REDACTED] was arrested and charged with First Degree Murder and related offenses for a shooting that occurred on or about [REDACTED].
2. The case was indicted by a Grand Jury on or about [REDACTED] and undersigned counsel entered her appearance on or about [REDACTED].
3. Also on [REDACTED] defense counsel filed multiple request for discovery.
4. On or about [REDACTED], the State provided its initial disclosures.
5. On or about [REDACTED], this Honorable Court passed an order allowing the State to produce grand jury testimony to the defendant.
6. On [REDACTED] and [REDACTED], the State provided several more disclosures to the defense, including three expert witness disclosures and DNA reports, which reports had been completed approximately four months prior to disclosure.
7. Also on [REDACTED], [REDACTED] filed a second supplemental discovery request. See

attached.

8. Over email, undersigned counsel inquired with the prosecutor as to the status of multiple outstanding discovery issues.
9. The assigned prosecutor appears to be on leave until [REDACTED], and undersigned counsel anticipates the outstanding items will be provided upon his return, but having received no response from the prosecutor and having several items outstanding, [REDACTED] files this motion to compel seeking:
 - a. The Grand Jury testimony from the above-captioned matter;
 - b. All sworn statements, affidavits, and returns related to the search of [REDACTED] conducted on or about [REDACTED];
 - c. Any and all documents related to case number [REDACTED];
 - d. Any and all body worn camera footage related to gathering and observing of surveillance footage from [REDACTED] on or about [REDACTED], see [REDACTED];
 - e. All sworn statements indicating that [REDACTED] was the target of the search warrant executed on [REDACTED];
 - f. Any and all surveillance footage captured from Enterprise Rent-a-Car as well as pictures that were captured and disseminated from the same; see id. at [REDACTED];
 - g. Any and all lab reports related to the victim's car, which was processed for testing on or about [REDACTED], including but not limited to requests for latent print comparisons and DNA; see id. at [REDACTED];
 - h. The recorded statement of [REDACTED] obtained on or about [REDACTED];
 - i. The search and seizure warrants for [REDACTED] and [REDACTED]'s DNA
 - j. Any and all additional recorded statements procured during the investigation of the above-captioned matter;
 - k. The body worn camera footage which captured Baltimore Police Department members executing a search and seizure warrant at [REDACTED] for security footage from a residence;
 - l. Instant messages sent between BPD officers, captured on BWC, on [REDACTED] [REDACTED] related to the investigation;
 - m. Notes and recordings from any additional witness interviews, referenced in

discovery.

- n. Underlying DNA data for the results provided to defense counsel on or about [REDACTED]
- o. All call data records provided by T-Mobile for [REDACTED], not just those for [REDACTED];
- p. All video retrieval forms and related documents;
- q. Any and all IAD files required to be disclosed pursuant to rule 4-263;
- r. Any additional items required to be disclosed pursuant to rule 4-263.

WHEREFORE, the Defense respectfully moves this Court to:

- a. Grant [REDACTED]'s Motion to Compel or exclude any references to the same; or
- b. Grant a Hearing on this Motion; and
- c. Any other relief that justice so requires.

Respectfully submitted,

Deborah Katz Levi
Assistant Public Defender

[REDACTED]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this [REDACTED] a copy of the foregoing Motion to Compel was hand delivered to State Attorney's Office for Baltimore City, [REDACTED].

Deborah Katz Levi
Assistant Public Defender

STATE OF MARYLAND

v.



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IN THE
CIRCUIT COURT
FOR BALTIMORE CITY
CRIMINAL DIVISION
Case No

* * * * *

ORDER OF COURT

It is this _____ day of _____ 2019, by the Circuit Court for Baltimore City, Maryland hereby:

ORDERED, that Defendant’s Motion to Compel is hereby granted and that the Baltimore City State’s Attorney’s Office shall provide the requested records to Counsel for the Defendant within 5 days; or

a hearing is scheduled for _____, 2019; or

the State is precluded from using any and all evidence related to the discovery that has not yet been provided.

JUDGE

STATE OF MARYLAND

v.

[REDACTED]

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*
*

IN THE
CIRCUIT COURT
FOR BALTIMORE CITY
CRIMINAL DIVISION
Case No [REDACTED]

MOTION TO DISMISS OR EXCLUDE

The Defendant, [REDACTED], by undersigned counsel, Deborah Katz Levi, hereby moves this Court to dismiss the above captioned matter, or, in the alternative, to impose discovery sanctions, pursuant to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; Articles 21, 24, 25 and 26 of the Maryland Declaration of Rights; Rule 4-263 of the Maryland Rules of Criminal Procedure; Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972), State v. Williams, 392 Md. 194 (2006); and Williams v. State, 364, Md. 160 (2001).

In support of this Motion, [REDACTED] states the following:

1. On or about [REDACTED], [REDACTED] was arrested and charged with First Degree Murder and related offenses for a shooting that occurred on or about [REDACTED].
2. The event, captured on video, undisputedly shows that [REDACTED] is not the shooter.
3. After the police could not identify the actual shooter, they interviewed individuals who were alleged to be with the shooter on the day the victim, [REDACTED], was killed.

DAQUAN JOBES DISCOVERY

4. On [REDACTED] the police interviewed [REDACTED], held him at the police station for over six hours, identified him as a suspect, confiscated his phone, got a warrant for his DNA, and then let him go.
5. Notwithstanding the fact that the [REDACTED] interview was part of the investigation in this case,

the six-hour recorded interview with [REDACTED], as well as the search warrant for his DNA was not provided to defense counsel until one business day before trial was scheduled to begin, on [REDACTED].

6. Moreover, the interview is not in its original format, perhaps explaining why the audio is of such poor quality, and the video is unnecessarily redacted for over five minutes.
7. The unredacted portion of the video is helpful to [REDACTED]'s defense for several reasons.

GRAND JURY TESTIMONY

8. The case against [REDACTED] was indicted by a Grand Jury on or about [REDACTED].
9. The Grand Jury testimony was released to the State, pursuant to Court order, on [REDACTED] [REDACTED].
10. The [REDACTED] Order authorized the State to provide the Grand Jury testimony to defense counsel.
11. Notwithstanding the Court's order, the State did not provide the Grand Jury testimony to the defense until one business day before trial, in response to defense counsel's motion to compel.
12. Because the Grand Jury testimony includes testimony from the lead detective in this case, it is a required disclosure pursuant to rule 4-263, and the State has offered no justification for its belated disclosure.
13. Moreover, defense counsel asserts that the Grand Jury testimony contains a material misstatement by [REDACTED], which likely secured the indictment under false pretenses, and which requires defense counsel to address in a pleading.

DNA SEARCH AND SEIZURE WARRANTS

14. On [REDACTED], officers with the Baltimore Police Department (BPD) executed a search and seizure warrant for [REDACTED]'s DNA.
15. That search and seizure warrant, another required disclosure under rule 4-263, was not provided to defense counsel until one business day before trial.
16. The State also executed a search and seizure warrant for [REDACTED], and that search and seizure warrant was not provided to defense counsel until one business day before trial.

[REDACTED] SEARCH AND SEIZURE WARRANT & EXTENSIVE BODY WORN CAMERA FOOTAGE

17. On [REDACTED], the police executed a search and seizure warrant at [REDACTED] [REDACTED]. The search and seizure warrant was in part for a [REDACTED].

narcotics investigation, and in part, related to [REDACTED]'s homicide.

18. At the conclusion of the execution of the warrant, [REDACTED] was arrested.
19. Because the warrant was related to the homicide, [REDACTED] was present.
20. During the execution of the warrant, the police collected well over 20 hours of body camera footage, which allegedly includes the recovery of the weapon used in the instant case.
21. The warrant and related arrest documents, created nearly a year ago, were only provided to defense counsel on [REDACTED], one business day before trial was scheduled to begin.
22. The entirety of the body worn camera footage has still not been provided to defense counsel in a workable format.
23. As of Friday afternoon, defense counsel was still receiving hours of body worn camera footage from the State.
24. Defense counsel has been unable to view the majority of the footage, as it was provided on Blu-ray CD or in over 36 separate emails, each one taking a significant amount of time to download.
25. The untimely production of the documents related to the search and seizure warrant and the extensive body worn camera bears no reasonableness.

SURVEILLANCE FOOTAGE FROM 500 CHATEAU AVENUE

26. On or about [REDACTED], BPD [REDACTED] captured surveillance footage from a civilian's security system at [REDACTED]. That surveillance footage provides potentially exculpatory material to [REDACTED]'s defense.
27. Without explanation for the delay, that surveillance footage was provided to defense counsel one business day before trial was scheduled to begin.

MOBILE CRIME LAB

28. The BPD's mobile crime lab took over 200 photos on [REDACTED]. Those photos were not provided to defense counsel until one business day before trial, and have not been provided in a workable format. In other words, they were provided on a blu-ray CD, and defense counsel does not have technology to play a blu-ray CD.
29. Mobile crime lab also processed [REDACTED]'s vehicle for DNA and prints on the day of the shooting. The results of which have not yet been provided.

ENTERPRISE RENT-A-CAR SURVEILLANCE FOOTAGE.

30. On or about [REDACTED], the BPD obtained surveillance footage from an Enterprise Rent-a-Car. That footage was only provided to defense counsel one business day before trial

PROCEDURAL POSTURE

31. [REDACTED]'s trial was postponed one business day, to [REDACTED].
32. As of today, [REDACTED], discovery is still incomplete.
33. Rule 4-263 requires discovery to be disclosed to the defense, without request, within thirty day's of the defendant's initial appearance.
34. The rules of discovery are precise rubrics, not guidelines.
35. [REDACTED] has been held without bail for over ten (10) months.
36. This inadequate and incomplete discovery interferes with [REDACTED]'s right to a due process, a fair trial, effective assistance of counsel and the right to prepare a defense.
37. As [REDACTED] has already been held without bail for nearly a year, further delay is not helpful.

I. THIS COURT SHOULD DISMISS THE INDICTMENT BECAUSE THE STATE FAILED TO COMPLY WITH THE RULES OF DISCOVERY AND THE UNITED STATES CONSTITUTION, AND [REDACTED] HAS BEEN SEVERLY PREJUDICED AS A RESULT

[REDACTED]'s motion is based on the failure of the Baltimore City State's Attorney's Office's to execute its affirmative obligation to seek out and provide the defense with discovery; its failure to timely disclose discovery; and the failure of the Baltimore City Police Department to adequately compile and disclose evidence. As will be explained more fully below, the late unjustified disclosure of discovery, while [REDACTED] has been held without bail for ten (10) months, deprives him of his rights to due process, effective assistance of counsel, and the right to present and prepare a defense. Further, the failure to make timely disclosures violates rule 3.8 of the Maryland Rules of Professional Conduct. Moreover, [REDACTED]'s fundamental right to a fair trial has been irreparably harmed. As a result, [REDACTED] requests that this Court dismiss this entire matter, or, in the alternative, exclude all the State's law enforcement witnesses from testifying, or any other relief this Court deems appropriate.

Were this court to deny ██████'s request and impose no sanction is to act in complicity with the wrongdoing: "When a public official behaves with such casual disregard for his constitutional obligations and the rights of the accused, it erodes the public's trust in our justice system, and chips away at the foundational premises of the rule of law. When such transgressions are acknowledged yet forgiven by the courts, we endorse and invite their repetition." United States v. Olsen, 737 F.3d 625, 632 (9th Cir. 2013).

In Maryland, "[t]he State's compliance with the[discovery] rules is never discretionary, as the Maryland Rules of Procedure have the force of law; they are not mere guides but are precise rubrics to be strictly followed." Williams v. State, 364, Md. 160, 171 (2001). The rules require disclosure of discoverable material, without the defendant's request, within thirty (30) days of the defendant's first appearance. See Md. R. 4-263 (h). Moreover, the State has a duty to "exercise due diligence to identify all of the material and information that must be disclosed under this Rule." Id. At (c)(1). It is of not moment if the withheld evidence was in the hands of the police department or the State: Evidence in the possession of the police department is deemed to be in the possession of the State's Attorney. See Kyles v. Whitley, 514 U.S. 419, 437-38 (1995); Williams v. State, 364 Md. 160, 176-77 (2001).

When the police or the State fail to comply with Rule 4-263, section (n) provides the Court with a multitude of sanctions that it can impose. Dismissal is an option. The court is also entitled to exclude witnesses. In this case, as will be explained further, the State or the police (a distinction without a difference) has withheld significant discovery that is helpful to ██████'s defense, for an inordinate amount of time. ██████ has been incarcerated for over ten months, and has been prejudiced as a result. See Hopkins v. State, 19. Md. App. 414 (1974) ("Withholding exculpatory

evidence is a denial of Due Process”). Therefore, [REDACTED] moves this Honorable Court to dismiss the above action or impose any other sanction that justice so requires.

**THIS COURT SHOULD DISMISS THE INDICTMENT AS A CONTINUANCE ONLY
FURTHER HARMS [REDACTED]**

In Brady v. Maryland, 373 U.S. 83, 87 (1963), the Supreme Court held that the government violates due process when it "suppress[es] . . . evidence favorable to an accused upon request . . . where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Id. at 87. Expanding on Brady in United States v. Agurs, 427 U.S. 97 (1976), the Court explained that a defendant need not always make a request for exculpatory evidence; rather, in certain circumstances the prosecution has a duty to disclose, even without request. See id. at 103-04. And in United States v. Bagley, 473 U.S. 667 (1985), "the Court disavowed any difference between exculpatory and impeachment evidence for Brady purposes, and . . . held that regardless of request, favorable evidence is material, and constitutional error results from its suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Kyles v. Whitley, 514 U.S. 419, 434 (1995) (internal quotation marks omitted).

These cases, which are often bundled together and referred to as the Brady rule, undoubtedly provide the basis for one of the most essential pieces of a fair criminal justice system: the requirement that a trial and a prosecution be fair. In doing so, the Supreme Court imposes an awesome and affirmative duty on the individual prosecutor to seek out exculpatory evidence and then provide it to the defense. This obligation is based on the idea that "[s]ociety wins not only when the guilty are convicted but when criminal trials are fair; [and conversely] our system . . . suffers when any accused is treated unfairly." Id. "This in turn means that the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf

in the case, including the police.” Kyles v. Whitley, 514 U.S. 419, 437 (1995). Thus, the prosecution cannot escape its responsibility or its liability by claiming it was unaware of evidence kept in the sole possession of the police department.

That said, a police officer acting surreptitiously negligently to hide and conceal evidence makes the prosecutor's job nearly impossible. And, as a result, requires courts to take swift action when it becomes clear that law enforcement is interfering with the administration of justice. While the prosecution has the responsibility to seek out exculpatory evidence and provide it to the defense, the police department that plays cat and mouse with the evidence ought to be swiftly sanctioned, lest the court be complicit in the wrongdoing: "When a public official behaves with such casual disregard for his constitutional obligations and the rights of the accused, it erodes the public's trust in our justice system, and chips away at the foundational premises of the rule of law. When such transgressions are acknowledged yet forgiven by the courts, we endorse and invite their repetition." United States v. Olsen, 737 F.3d 625, 632 (9th Cir. 2013).

While the Brady requirement is triggered at the start of trial, the wheels of justice come no less to a screeching halt when the prosecution and the police unnecessarily and unreasonably delay the production of exculpatory evidence: “A prosecutor's timely disclosure obligation with respect to Brady material can never be overemphasized, and the practice of delayed production must be disapproved and discouraged.” Boyd v. United States, 908 A.2d 39, 57 (D.C. 2006) (citations omitted). As the D.C. Circuit held in Miller v. United States, 14 A.3d 1094, 1107 (D.C. 2011), the "constitutional duty [under Brady must] be taken both literally and seriously; “[a] rule ... declaring [that the] prosecution may hide, defendant must seek, is not tenable in a system constitutionally bound to accord defendants due process.” Id. at 1107 (quoting Banks v. Dretke, 540 U.S. 668, 696 (2004) (alterations in original)). When the prosecution defers the production of evidence such a

practice "is not compatible with the Constitution, with our case law, or with applicable professional standards." Id. As a result, this Court must act swiftly to sanction such conduct.

As the notes to rule 4-263 indicates, Maryland's discovery rule merely codify the principles set forth in Brady and its progeny. See cross reference to Rule 4-263(d)(6). Thus, it is of material importance when the State fails to comply with the rule. And Courts need to impose a sanction in order to convey that message and repair the harm to incarcerated defendants. In this case, the State failed to disclose exculpatory evidence until nearly one year after [REDACTED] was incarcerated. The police department also failed to gather and disseminate discovery in any expeditious manner. This conduct violates the Constitution; Rule 4-263 of the Maryland Rules of Evidence; and Rule 3.8 of the Maryland Rules of Professional Conduct. See Owens v. Baltimore City State's Attorneys Office, 767 F.3d 379, 401 (2014). While the State or the police, a distinction without a difference, withheld evidence for over a year. [REDACTED] has been held without bail this entire time and his constitutional right to a speedy trial has been impaired, as has his right to effective assistance of counsel and his right to present and prepare a defense.

To minimize the harm, and deter future conduct as egregious as has occurred here, Mr. Dudley seeks to: (1) dismiss the action; (2) prevent all the BPD witnesses from testifying in this matter; and (3) any other relief that this Court deems necessary.

Respectfully submitted,

/s/ Deborah K. Levi

Deborah K. Levi
Attorney for Defendant [REDACTED]

[REDACTED]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this [REDACTED] a copy of the foregoing Motion to Dismiss was Emailed to [REDACTED] at [REDACTED], and hand delivered on the [REDACTED] to [REDACTED]

/s/ Deborah Katz Levi

Deborah Katz Levi
Assistant Public Defender

STATE OF MARYLAND

v.

[REDACTED]

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IN THE

CIRCUIT COURT

FOR BALTIMORE CITY

CRIMINAL DIVISION

Case No

[REDACTED]

* * * * *

ORDER OF COURT

It is this _____ day of _____ 2019, by the Circuit Court for Baltimore City, Maryland hereby:

ORDERED, that Defendant's Motion to Compel is hereby granted and that the Baltimore City State's Attorney's Office shall provide the requested records to Counsel for the Defendant within 5 days; or

a hearing is scheduled for _____, 2019; or

the State is precluded from using any and all evidence related to the discovery that has not yet been provided.

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JUDGE

-STATE OF MARYLAND

v.

██████████

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IN THE
CIRCUIT COURT
FOR BALTIMORE CITY
CRIMINAL DIVISION
Case No. ██████████

THIRD MOTION TO DISMISS OR EXCLUDE and MOTION FOR SANCTIONS

The Accused, ██████████, by undersigned counsel, Deborah Katz Levi and ██████████, hereby moves this Court to dismiss the above captioned matter, or, in the alternative, to exclude witnesses or impose other discovery sanctions pursuant to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; Articles 21, 24, 25 and 26 of the Maryland Declaration of Rights; Rule 4-263 of the Maryland Rules of Criminal Procedure; Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972), State v. Williams, 392 Md. 194 (2006); and Williams v. State, 364, Md. 160 (2001), and Rule 3.6 of the Maryland Rules of Professional Conduct.

In support of this Motion, ██████████ states the following:

1. ██████████'s case was specially set for trial on ██████████. Prior to trial, ██████████ filed a Motion to Compel.
2. Before proceeding to ██████████'s specially set trial, this Honorable Court heard argument on ██████████'s Motion to Compel.
3. At the conclusion of the ██████████ hearing, this Honorable Court concluded, and the State conceded, multiple discovery violations. See ██████████ Transcript, Attached as Exhibit 1 at ██████████; ██████████; ██████████.
4. Rather than imposing any sanctions, this Honorable Court postponed ██████████'s trial. Countless items of discovery that had been in the State's possession for nearly a year were produced on the day of trial, or just before it. See id.
5. After the late production of discovery and ██████████'s diligence, it was clear that additional crucial discovery had been withheld even after the first specially set trial and the discovery hearing. As a result, ██████████ filed a Motion to Dismiss or Exclude.
6. On the first day of ██████████'s second specially set trial, this Honorable Court entertained ██████████'s Motion to Dismiss or Exclude. At the conclusion of the hearing, this Honorable Court held that there were multiple additional discovery violations. See ██████████ Transcript, Attached as Exhibit 2, at ██████████; ██████████.

7. Even after a second round of discovery violations, no sanction was imposed, except for postponement, which merely punishes ██████████ who has been held without bail since ██████████ ██████████.
8. After the second specially set trial date, and two discovery hearings at which the State asserted all discovery had been provided, the State produced yet another round of late discovery items, all of which had been in the State's possession for well over a year, including but not limited to an investigation into an alternate suspect and previously undisclosed witness interviews.
9. The late discovery included progress reports about an alternate suspect that were generated in ██████████. Without any explanation, those records were not produced to defense until ██████████, after the second specially set trial date. That means the State was prepared to go to trial two times, without full and fair disclosure to defense, and after the State had represented that discovery was complete.
10. Either the State materially misrepresented to this Honorable Court that all discovery had been turned over in ██████████ and again in ██████████, or the State entirely failed to perform the due diligence required by Maryland Rule 4-263. Or worse yet, the State cherry-picked the discovery they intended to disclose to defense.
11. Regardless of the reason for the State's failure, ██████████ is prejudiced by the State's late discovery, again, because he is forced to re-invent trial strategy, with little time to adequately do so.
12. As a result, ██████████ urges this Court to impose a sanction. At each specially set trial date, the State has asserted that the universe of evidence in this case has been provided to defense, and after each specially set trial date, that proves to be entirely untrue. Every single late document has been in the State's possession since the inception of this case, and there is no excuse for the State's failure to provide it in a timely fashion.
13. To give this Court, and the third Honorable Judge to which this case has been assigned, an idea of the breadth of discovery violations, the following is a sampling of items that have been untimely provided:
 - a. Progress reports about an alternate suspect, created well over a year before production;
 - b. Recorded Interviews, referenced in initial discovery and requested by defense counsel multiple times;
 - c. Police reports;
 - d. IAD files involving the State's prosecution for perjury of the officer who recovered the gun;
 - e. Lotus notes and recorded interviews created well over a year ago;
 - f. Raw surveillance footage capturing the alleged murder;
 - g. Entire witness interviews, completely shielded from defense;
 - h. Grand Jury testimony;
 - i. Lab reports and other forensic documents
14. The State has failed in its duty to abide by the discovery rules, which memorialize ██████████'s constitutional right to a fair trial and to due process, and the integrity of the prosecution is called into question as a result.

15. Whatever the reason, defense counsel has been prejudiced by the State's inadequate production or intentional withholding, and this Court has yet to impose a sanction to encourage the State to abide by the rules or to make this a fair trial.

16. Regarding items that are still outstanding, see Defendant's Request for Outstanding Discovery Items Known to Defense at this Time, Attached as Exhibit 3, the State has also failed to produce any of the electronic messages that this Honorable Court ordered the State to provide at the second specially set trial. See [REDACTED] Tr. At [REDACTED].

As a result, [REDACTED] moves this Court to dismiss the above captioned matter. Or in the alternative, exclude the Baltimore Police Department officers from testifying, as the integrity of the prosecution has been hampered by their lack of disclosures.

Respectfully submitted,

Deborah K. Levi
Attorney for Defendant [REDACTED]
[REDACTED]

[REDACTED]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this [REDACTED] a copy of the foregoing Motion to Dismiss was E-mailed to [REDACTED] at [REDACTED], and hand delivered to [REDACTED].

Deborah Katz Levi
Assistant Public Defender

STATE OF MARYLAND

v.

[REDACTED]

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IN THE
CIRCUIT COURT
FOR BALTIMORE CITY
CRIMINAL DIVISION
Case [REDACTED]

DEFENDANT’S SECOND MOTION TO DISMISS OR EXCLUDE

The Defendant, [REDACTED], by undersigned counsel, Deborah Katz Levi, hereby moves this Court to dismiss the above captioned matter, or, in the alternative, to impose discovery sanctions, pursuant to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; Articles 21, 24, 25 and 26 of the Maryland Declaration of Rights; Rule 4-263 of the Maryland Rules of Criminal Procedure; Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972), State v. Williams, 392 Md. 194 (2006); and Williams v. State, 364, Md. 160 (2001).

In support of this Motion, [REDACTED] states the following:

PROCEDURAL POSTURE

1. [REDACTED] was arrested for the above-captioned matter on or about [REDACTED].
2. The arrest warrant, issued [REDACTED], relates to a shooting that occurred on or about [REDACTED].
3. Parts of the shooting were captured on a resident’s security camera, and undisputedly show an unidentified male shoot at a car in broad daylight while the individual the State alleges to be [REDACTED] stands on the sidewalk, away from the car.
4. The State has not identified the shooter.
5. On [REDACTED], the State arrested [REDACTED] for his role as a bystander. He has been held without bail since then.

6. [REDACTED] was first scheduled for trial on [REDACTED].
7. Prior to that date, on [REDACTED], the State was authorized to release grand jury transcripts to the defense. That disclosure did not occur until seven months later, one day before the second trial date.
8. On [REDACTED] at the first trial date, the State provided exculpatory DNA results, which had been completed approximately five months prior.
9. The trial was then postponed and specially set for [REDACTED].
10. One day prior to trial, the State provided grand jury testimony, multiple hours of body worn camera footage, search and seizure documents, police reports, mobile crime lab documents, a recorded statement of an unindicted co-conspirator, and approximately 100 pages of additional discovery.
11. Defense counsel filed a motion to dismiss or, in the alternative, a motion for sanctions.
12. That Motion was heard on the first day of trial.
13. At the hearing the State conceded that it failed to provide some of the discovery in a timely manner.
14. The Honorable [REDACTED] ruled that there were multiple discovery violations, but the only remedy the Court imposed was a postponement.
15. The trial was postponed until [REDACTED].
16. [REDACTED] has been incarcerated for nearly a year, without bail.
17. As of the filing of this Motion, discovery is still incomplete.
18. Rule 4-263 requires discovery to be disclosed to the defense, without request, within thirty days of the defendant's initial appearance.
19. The rules of discovery are precise rubrics, not guidelines.
20. [REDACTED] has been held without bail for over eleven (11) months.
21. This incomplete discovery interferes with [REDACTED]'s right to due process, a fair trial, effective assistance of counsel and the right to prepare a defense.
22. As he has already been held without bail for nearly a year, further delay is not helpful.
23. As a result, and based on the following additional information, [REDACTED] moves to dismiss the above-captioned matter.

DAQUAN JOBES DISCOVERY

24. On [REDACTED], the police interviewed [REDACTED], held him at the police station

for over six hours, identified him as a suspect, confiscated his phone, got a warrant for his DNA, and then let him go.

25. [REDACTED] disclosed to the police that he lured the victim, [REDACTED], into the [REDACTED] [REDACTED] so [REDACTED] could sell drugs to [REDACTED]'s friends.
26. Notwithstanding the fact that [REDACTED]'s interview was a crucial part of the investigation in this case, the six-hour recorded interview with [REDACTED], as well as the search warrant for his DNA was only provided to defense counsel in response to a motion to compel a year after it was captured. In other words, defense counsel received the interview in [REDACTED] [REDACTED]
27. Moreover, the interview is not in its original format, perhaps explaining why the audio is of such poor quality, and the video is unnecessarily redacted for over five minutes.
28. The unredacted portion of the video is helpful to [REDACTED]'s defense for several reasons.
29. Notwithstanding [REDACTED]'s request, the State has still not produced an unredacted version of [REDACTED]'s interview.

GRAND JURY TESTIMONY

30. The above-captioned matter was indicted by a Grand Jury on or about [REDACTED].
31. The Grand Jury testimony was released to the State, pursuant to Court order, on [REDACTED] [REDACTED]
32. The [REDACTED] Order authorized the State to provide the Grand Jury testimony to defense counsel.
33. Notwithstanding the Court's order, the State did not provide the Grand Jury testimony to the defense until one business day before trial date number 2, in response to defense counsel's motion to compel.
34. Because the Grand Jury transcript includes testimony from the lead detective in this case, it is a required disclosure pursuant rule 4-263, and the State has offered no justification for its belated disclosure.
35. Moreover, defense counsel asserts that the Grand Jury testimony contains a material misstatement by [REDACTED], which likely secured the indictment under false pretenses.
36. More specifically, [REDACTED] states, under penalty of perjury, that [REDACTED]

approaches the car that the decedent was driving just prior to the shooting. This never happens. It is likely that this misstatement is what secured the indictment, under false pretenses.

37. As a result, [REDACTED] moves to dismiss the above-captioned matter as it was based on a material misrepresentation.

502 CHATEAU AVENUE SEARCH AND SEIZURE WARRANT & EXTENSIVE BODY WORN CAMERA FOOTAGE

38. On [REDACTED], the police executed a search a seizure warrant at [REDACTED] [REDACTED]. The search and seizure warrant was in part for a narcotics investigation, and in part, related to [REDACTED]'s homicide.

39. At the conclusion of the execution of the warrant, [REDACTED] was arrested.

40. Because the home being searched was related to the homicide, [REDACTED] was present.

41. During the execution of the warrant, the police collected well over 20 hours of body worn camera footage, which allegedly includes the recovery of the weapon used in the instant case.

42. The warrant and related arrest documents, created nearly a year ago, were only provided to defense counsel on [REDACTED], one business day before trial was scheduled to begin.

43. The body worn camera footage reveals that, contrary to every police report provided in this case, [REDACTED] found the weapon alleged to be used in this case.

44. But for [REDACTED] filing a motion to compel the production of the BWC from the search warrant, this fact would have never been known to defense counsel.

45. When defense counsel explained to the State that despite what the police reports say, [REDACTED] [REDACTED] is not the officer who finds the weapon, the State asserts that [REDACTED] finds the weapon.

46. This fact is not true.

47. [REDACTED] finds the weapon.

48. The State has never openly disclosed this fact and represents that [REDACTED] [REDACTED] find the weapon.

49. This is a critical misrepresentation and a profound Brady violation.

50. Because the State concealed the identity of the officer who found the weapon, defense counsel conducted a limited investigation, which revealed that on [REDACTED], **three weeks before [REDACTED] was specially set for trial the State's Attorney's Office for**

Baltimore City prosecuted [REDACTED] for perjury.

51. The State concealed [REDACTED]'s involvement in this matter while its office prosecuted him for perjury.
52. As Chief Judge Bell writes in State v. Williams, 392 Md. 194, 218-19 (2006), every prosecutor in an office is presumed to know what others, including the police, know. “[P]rosecutors within the same office are not excused from their *Brady* obligations. The duty, as prescribed by Sleeper, applies to all members of the prosecution staff. . . . [P]olice, when involved in the investigation and preparation of the criminal case being prosecuted” are part of the prosecution team, for purposes of Brady.”
53. The State cannot escape its Brady obligation claiming it was unaware [REDACTED] was prosecuted for perjury.
54. Yet, to this date, the State has never acknowledged or affirmatively disclosed that [REDACTED] located the weapon in this case, even though that event is captured on video, or that the State prosecuted him for perjury three weeks before [REDACTED]'s second trial date.
55. Moreover, Defense counsel has asked repeatedly to view the IAD files for each officer related to the case.
56. The Officer who locates a murder weapon cannot be said to be unrelated to the case.
57. The State has failed to disclose any IAD files or prosecution documents related to [REDACTED]'s perjury charges.

SURVEILLANCE FOOTAGE FROM 500 CHATEAU AVENUE

58. On or about [REDACTED], BPD [REDACTED] captured surveillance footage from a civilian's security system at [REDACTED]. That surveillance footage provides potentially exculpatory material to [REDACTED]'s defense.
59. Without explanation for the delay, that surveillance footage was provided to defense counsel one business day before trial was scheduled to begin and [REDACTED] has never been provided with the identity of the resident who provided the footage.

SURVEILLANCE FOOTAGE FROM [REDACTED]

60. The State secured surveillance footage from a private residence at [REDACTED].
61. The footage is not continuous.
62. Seven minutes leading up to the shooting are missing.

63. The video begins in the middle of the drug transaction in which [REDACTED] is killed.
64. Defense counsel has requested the entirety of the footage from the State several times.
65. The State has failed to provide the complete footage to defense counsel.
66. When defense counsel went to the citizen's home to see if she could retrieve the entirety of the video by herself, [REDACTED] with the Baltimore Police Department encouraged the civilian to deny us access to her surveillance system.
67. Fortunately, the civilian explained to [REDACTED] that she was well aware of who defense counsel and her team were, she had nothing to hide, and was not interested in denying us access to her surveillance system.
68. In any event, the original captured surveillance footage is no longer available.
69. However, it is clear that the system has 16 camera views and only three were provided.
70. The State captured the video footage on a flash drive, and for reasons unknown to defense, failed to provide the entirety of the footage to defense or retain the flash drive.
71. The missing seven minutes are critical to [REDACTED]'s defense.
72. The missing video footage is exculpatory and shows that [REDACTED] remained on the sidewalk across the street from the shooting for the entirety of the event.
73. Because, among other things, the State cannot comply with the rules of discovery, the rule of completeness, it failed to produce the video of the entirety of the shooting, and cannot authenticate the video based on the missing footage, the video should be excluded.

TEXT MESSAGES AND ELECTRONIC COMMUNICATIONS

74. Throughout the body worn camera in this case, officers are texting on their department issued cellphones about this case.
75. [REDACTED] has repeatedly requested those text messages, and the State has failed to produce them.

I. THIS COURT SHOULD DISMISS THE INDICTMENT BECAUSE THE STATE FAILED TO COMPLY WITH THE RULES OF DISCOVERY AND THE UNITED STATES CONSTITUTION, AND [REDACTED] HAS BEEN SEVERLY PREJUDICED AS A RESULT

[REDACTED]'s motion is based on the failure of the Baltimore City State's Attorney's Office to execute its affirmative obligation to seek out and provide the defense with discovery; its failure to

timely disclose discovery; and the failure of the Baltimore City Police Department to adequately compile and disclose evidence. As will be explained more fully below, the late unjustified disclosure of discovery, while ██████████ has been held without bail for eleven (11) months, deprives him of his rights to due process, effective assistance of counsel, and the right to present and prepare a defense. Further, the failure to make timely disclosures violates rule 3.8 of the Maryland Rules of Professional Conduct. Moreover, ██████████'s fundamental right to a fair trial has been irreparably harmed. As a result, ██████████ requests that this Court dismiss this entire matter, or, in the alternative, exclude all the State's law enforcement witnesses from testifying, or any other relief this Court deems appropriate.

Were this court to deny ██████████'s request and impose no sanction is to act in complicity with the wrongdoing: "When a public official [such as prosecutors] behave[] with such casual disregard for his constitutional obligations and the rights of the accused, it erodes the public's trust in our justice system, and chips away at the foundational premises of the rule of law. When such transgressions are acknowledged yet forgiven by the courts, we endorse and invite their repetition." United States v. Olsen, 737 F.3d 625, 632 (9th Cir. 2013).

In Maryland, "[t]he State's compliance with the [discovery] rules is never discretionary, as the Maryland Rules of Procedure have the force of law; they are not mere guides but are precise rubrics to be strictly followed." Williams v. State, 364, Md. 160, 171 (2001). The rules require disclosure of discoverable material, without the defendant's request, within thirty (30) days of the defendant's first appearance. See Md. R. 4-263 (h). Moreover, the State has a duty to "exercise due diligence to identify all of the material and information that must be disclosed under this Rule." Id. at (c)(1). It is of no moment if the withheld evidence was in the hands of the police department or the State: Evidence in the possession of the police department is deemed to be in the possession of the State's

Attorney. See Kyles v. Whitley, 514 U.S. 419, 437-38 (1995); Williams v. State, 364 Md. 160, 176–77 (2001).

When the police or the State fail to comply with Rule 4-263, section (n) provides the Court with a multitude of sanctions that it can impose. Dismissal is an option. The court is also entitled to exclude witnesses or evidence. In this case, as will be explained further, the State or the police (a distinction without a difference) has withheld significant discovery that is helpful to ██████'s defense, for an inordinate amount of time. ██████ has been incarcerated for over eleven months, and has been prejudiced as a result. See Hopkins v. State, 19. Md. App. 414 (1974) (“Withholding exculpatory evidence is a denial of Due Process”). Therefore, ██████ moves this Honorable Court to dismiss the above action or impose any other sanction that justice so requires.

**THIS COURT SHOULD DISMISS THE INDICTMENT AS A CONTINUANCE ONLY
FURTHER HARMS ██████**

In Brady v. Maryland, 373 U.S. 83, 87 (1963), the Supreme Court held that the government violates due process when it "suppress[es] . . . evidence favorable to an accused upon request . . . where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Id. at 87. Expanding on Brady in United States v. Agurs, 427 U.S. 97 (1976), the Court explained that a defendant need not always make a request for exculpatory evidence; rather, in certain circumstances the prosecution has a duty to disclose, even without request. See id. at 103-04. And in United States v. Bagley, 473 U.S. 667 (1985), "the Court disavowed any difference between exculpatory and impeachment evidence for Brady purposes, and . . . held that regardless of request, favorable evidence is material, and constitutional error results from its suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Kyles v. Whitley, 514 U.S. 419, 434 (1995) (internal quotation marks omitted).

These cases, which are often bundled together and referred to as the Brady rule, undoubtedly provide the basis for one of the most essential pieces of a fair criminal justice system: the requirement that a trial and a prosecution be fair. In doing so, the Supreme Court imposes an awesome and affirmative duty on the individual prosecutor to seek out exculpatory evidence and then provide it to the defense. This obligation is based on the idea that "[s]ociety wins not only when the guilty are convicted but when criminal trials are fair; [and conversely] our system . . . suffers when any accused is treated unfairly." Id. "This in turn means that the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." Kyles v. Whitley, 514 U.S. 419, 437 (1995). Thus, the prosecution cannot escape its responsibility or its liability by claiming it was unaware of evidence kept in the sole possession of the police department.

That said, a police officer acting surreptitiously negligently to hide and conceal evidence makes the prosecutor's job nearly impossible. And, as a result, requires courts to take swift action when it becomes clear that law enforcement is interfering with the administration of justice. While the prosecution has the responsibility to seek out exculpatory evidence and provide it to the defense, the police department that plays cat and mouse with the evidence ought to be swiftly sanctioned, lest the court be complicit in the wrongdoing: "When a public official behaves with such casual disregard for his constitutional obligations and the rights of the accused, it erodes the public's trust in our justice system, and chips away at the foundational premises of the rule of law. When such transgressions are acknowledged yet forgiven by the courts, we endorse and invite their repetition." United States v. Olsen, 737 F.3d 625, 632 (9th Cir. 2013).

While the Brady requirement is triggered at the start of trial, the wheels of justice come no less to a screeching halt when the prosecution and the police unnecessarily and unreasonably delay

the production of exculpatory evidence: “A prosecutor's timely disclosure obligation with respect to Brady material can never be overemphasized, and the practice of delayed production must be disapproved and discouraged.” Boyd v. United States, 908 A.2d 39, 57 (D.C. 2006) (citations omitted). As the D.C. Circuit held in Miller v. United States, 14 A.3d 1094, 1107 (D.C. 2011), the “constitutional duty [under Brady must] be taken both literally and seriously; “[a] rule ... declaring [that the] prosecution may hide, defendant must seek, is not tenable in a system constitutionally bound to accord defendants due process.” Id. at 1107 (quoting Banks v. Dretke, 540 U.S. 668, 696 (2004) (alterations in original)). When the prosecution defers the production of evidence such a practice “is not compatible with the Constitution, with our case law, or with applicable professional standards.” Id. As a result, this Court must act swiftly to sanction such conduct.

As the notes to rule 4-263 indicate, Maryland’s discovery rules merely codify the principles set forth in Brady and its progeny. See cross reference to Rule 4-263(d)(6). Thus, it is of material importance when the State fails to comply with the rule. And Courts need to impose a sanction in order to convey that message and repair the harm to incarcerated defendants. In this case, the State failed to disclose exculpatory evidence until nearly one year after ██████████ was incarcerated. The police department also failed to gather and disseminate discovery in any expeditious manner. This conduct violates the Constitution; Rule 4-263 of the Maryland Rules of Evidence; and Rule 3.8 of the Maryland Rules of Professional Conduct. See Owens v. Baltimore City State’s Attorneys Office, 767 F.3d 379, 401 (2014). While the State or the police, a distinction without a difference, withheld evidence for over a year. ██████████ has been held without bail this entire time and his constitutional right to a speedy trial has been impaired, as has his right to effective assistance of counsel and his right to present and prepare a defense.

To minimize the harm, and deter future conduct as egregious as has occurred here, ██████████ seeks to: (1) dismiss the action; (2) prevent all the BPD witnesses from testifying in this

matter; (4) exclude the incomplete surveillance video; and (4) any other relief that this Court deems necessary.

Respectfully submitted,

Deborah K. Levi
Attorney for Defendant [REDACTED]

[REDACTED]

[REDACTED]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this [REDACTED] a copy of the foregoing Motion to Dismiss was Emailed to [REDACTED] at [REDACTED], and hand delivered on the [REDACTED] to [REDACTED].

Deborah Katz Levi
Assistant Public Defender

STATE OF MARYLAND

v.



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IN THE
CIRCUIT COURT
FOR BALTIMORE CITY
CRIMINAL DIVISION
Case No

* * * * *

ORDER OF COURT

It is this _____ day of _____ 2019, by the Circuit Court for Baltimore City, Maryland hereby:

ORDERED, that Defendant's Motion to Compel is hereby granted and that the Baltimore City State's Attorney's Office shall provide the requested records to Counsel for the Defendant within 5 days; or

a hearing is scheduled for _____, 2019; or

the State is precluded from using any and all evidence related to the discovery that has not yet been provided.

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JUDGE

STATE OF MARYLAND

v.

[REDACTED]

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IN THE
CIRCUIT COURT
FOR BALTIMORE CITY
CRIMINAL DIVISION
Case No. [REDACTED]

THIRD MOTION TO DISMISS OR EXCLUDE and MOTION FOR SANCTIONS

The Accused, [REDACTED] by undersigned counsel, Deborah Katz Levi and [REDACTED] hereby moves this Court to dismiss the above captioned matter, or, in the alternative, to exclude witnesses or impose other discovery sanctions pursuant to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; Articles 21, 24, 25 and 26 of the Maryland Declaration of Rights; Rule 4-263 of the Maryland Rules of Criminal Procedure; Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972), State v. Williams, 392 Md. 194 (2006); and Williams v. State, 364, Md. 160 (2001), and Rule 3.6 of the Maryland Rules of Professional Conduct.

In support of this Motion, [REDACTED] states the following:


1. [REDACTED]'s case was specially set for trial on [REDACTED]. Prior to trial, [REDACTED] filed a Motion to Compel.
2. Before proceeding to [REDACTED] specially set trial, this Honorable Court heard argument on [REDACTED] Motion to Compel.
3. At the conclusion of the [REDACTED] hearing, this Honorable Court concluded, and the State conceded, multiple discovery violations. See [REDACTED] Transcript, Attached as Exhibit 1 at [REDACTED].
4. Rather than imposing any sanctions, this Honorable Court postponed [REDACTED] trial. Countless items of discovery that had been in the State's possession for nearly a year were produced on the day of trial, or just before it. See id.
5. After the late production of discovery and [REDACTED] diligence, it was clear that additional crucial discovery had been withheld even after the first specially set trial and the discovery hearing. As a result, [REDACTED] filed a Motion to Dismiss or Exclude.
6. On the first day of [REDACTED] second specially set trial, this Honorable Court entertained [REDACTED] Motion to Dismiss or Exclude. At the conclusion of the hearing, this Honorable Court held that there were multiple additional discovery violations. See [REDACTED] Transcript, Attached as Exhibit 2, at [REDACTED].


7. Even after a second round of discovery violations, no sanction was imposed, except for postponement, which merely punishes [REDACTED] who has been held without bail since [REDACTED]
8. After the second specially set trial date, and two discovery hearings at which the State asserted all discovery had been provided, the State produced yet another round of late discovery items, all of which had been in the State's possession for well over a year, including but not limited to an investigation into an alternate suspect and previously undisclosed witness interviews.
9. The late discovery included progress reports about an alternate suspect that were generated in [REDACTED]. Without any explanation, those records were not produced to defense until [REDACTED] after the second specially set trial date. That means the State was prepared to go to trial two times, without full and fair disclosure to defense, and after the State had represented that discovery was complete.
10. Either the State materially misrepresented to this Honorable Court that all discovery had been turned over in [REDACTED] and again in [REDACTED] or the State entirely failed to perform the due diligence required by Maryland Rule 4-263. Or worse yet, the State cherry-picked the discovery they intended to disclose to defense.
11. Regardless of the reason for the State's failure [REDACTED] is prejudiced by the State's late discovery, again, because he is forced to re-invent trial strategy, with little time to adequately do so.
12. As a result, [REDACTED] urges this Court to impose a sanction. At each specially set trial date, the State has asserted that the universe of evidence in this case has been provided to defense, and after each specially set trial date, that proves to be entirely untrue. Every single late document has been in the State's possession since the inception of this case, and there is no excuse for the State's failure to provide it in a timely fashion.
13. To give this Court, and the third Honorable Judge to which this case has been assigned, an idea of the breadth of discovery violations, the following is a sampling of items that have been untimely provided:
 - a. Progress reports about an alternate suspect, created well over a year before production;
 - b. Recorded Interviews, referenced in initial discovery and requested by defense counsel multiple times;
 - c. Police reports;
 - d. IAD files involving the State's prosecution for perjury of the officer who recovered the gun;
 - e. Lotus notes and recorded interviews created well over a year ago;
 - f. Raw surveillance footage capturing the alleged murder;
 - g. Entire witness interviews, completely shielded from defense;
 - h. Grand Jury testimony;
 - i. Lab reports and other forensic documents
14. The State has failed in its duty to abide by the discovery rules, which memorialize [REDACTED] constitutional right to a fair trial and to due process, and the integrity of the prosecution is called into question as a result.

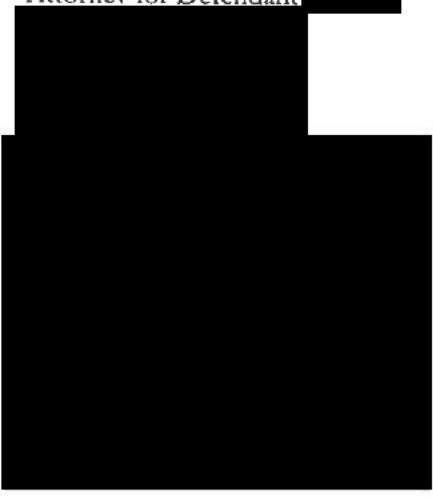
15. Whatever the reason, defense counsel has been prejudiced by the State's inadequate production or intentional withholding, and this Court has yet to impose a sanction to encourage the State to abide by the rules or to make this a fair trial.

16. Regarding items that are still outstanding, see Defendant's Request for Outstanding Discovery Items Known to Defense at this Time, Attached as Exhibit 3, the State has also failed to produce any of the electronic messages that this Honorable Court ordered the State to provide at the second specially set trial. See 11/4/19 Tr. At M80-81; 85: 8-14; 88-89.

As a result, Mr. Dudley moves this Court to dismiss the above captioned matter. Or in the alternative, exclude the Baltimore Police Department officers from testifying, as the integrity of the prosecution has been hampered by their lack of disclosures.


Respectfully submitted,

Deborah K. Levi
Attorney for Defendant 



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this  a copy of the foregoing Motion to Dismiss was E-mailed to , and hand delivered to 



Deborah Katz Levi
Assistant Public Defender

Exhibit 1

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND,

vs.

Case No.: [REDACTED]

[REDACTED]

Defendant.

_____ /

OFFICIAL TRANSCRIPT OF PROCEEDINGS
(MOTIONS HEARING)

Baltimore, Maryland

[REDACTED]

BEFORE:

HONORABLE [REDACTED], Judge

APPEARANCES:

For the State:

[REDACTED], ESQUIRE

For the Defendant:

DEBORAH LEVI, ESQUIRE

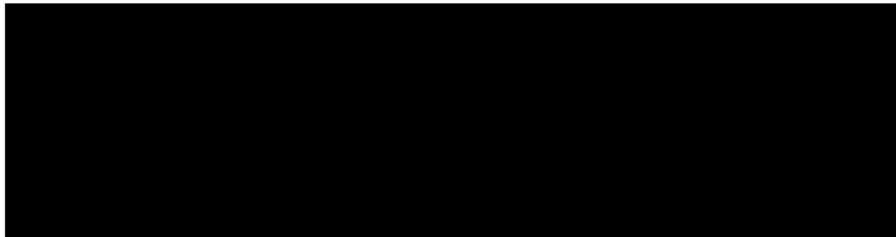
Electronic Proceedings Transcribed by: [REDACTED]

[REDACTED]

C O N T E N T S

	<u>P a g e</u>
RECORD OF PROCEEDINGS	M-3
MOTION TO DISMISS OR EXCLUDE BY MS. LEVI BY [REDACTED]	M-3 M-25
COURT'S RULING	M-43

-oOo-



P R O C E E D I N G S

(9:32 a.m.)

THE COURT: Hello, sir. Good morning.

THE DEFENDANT: Hello. Good morning.

THE COURT: Want to call the case, [REDACTED]?

[REDACTED]: Yes, Your Honor. Your Honor, calling for the record *State of Maryland v.* [REDACTED]

[REDACTED] --

THE COURT: Give him hands -- hands please.

[REDACTED]: [REDACTED] for the State.

MS. LEVI: Good morning, Your Honor. Deborah Levi on behalf of [REDACTED] who's present to my left, Your Honor. Can he be unshackled at least in the hands for the hearing.

THE COURT: I just asked them to.

MS. LEVI: Oh, I'm sorry. I didn't hear. Thank you. So may I proceed?

THE COURT: Uh-huh.

MS. LEVI: So --

THE COURT: Have a seat, Ladies.

MS. LEVI: This case was specially set to begin on [REDACTED]. On -- and so just backing up for the record, because we haven't yet been on the record since we've been specially set, on -- I'm sorry, [REDACTED],

[REDACTED]

1 [REDACTED]. On [REDACTED], we had asked -- you can
2 have a seat, [REDACTED] -- for a chamber's chat with Your
3 Honor to -- there was some talk about Chambers had wanted to
4 bring in a jury on Friday morning and I wanted to advise
5 Chambers that we were not quite there yet because there were
6 some outstanding discovery issues. Particularly, the
7 Defense had filed a motion to compel or exclude on
8 certificate of good faith. That was not filed until [REDACTED]
9 [REDACTED] but attached to that is a request for a supplemental
10 discovery that had been filed back in -- Court's indulgence
11 for just one second -- the [REDACTED] -- on the [REDACTED],
12 Defense had filed a supplemental request for discovery.
13 Having gotten no response from the supplemental request for
14 discovery, Counsel, trying to work it out with the State,
15 had sent multiple e-mails following up on discovery. I
16 didn't bother to attach all of those, but as an Officer of
17 the Court, I'm telling you that I sent several e-mails --
18 (phone rings) oh, my apologies. I believe that [REDACTED]
19 had taken some leave for the [REDACTED] so we did not
20 get a response from the State on the outstanding items on
21 the motion to compel until [REDACTED] when we
22 were scheduled to begin on [REDACTED], and then we got a
23 -- more discovery on [REDACTED]. And I want to catalog
24 with the Court where we are posture-wise.

25 So some of the items that are from the

[REDACTED]

1 supplemental discovery request in May, the motion to compel
2 from August, and admittedly, there was a delay between May
3 and August. I was in a fourth re-trial of a very high-
4 profile murder which had occupied a lot of my time. So
5 after that concluded, I then -- you can pull up -- brought
6 my attention back to [REDACTED]'s case, preparing for trial
7 and noticed what was gone, starting in early August started
8 asking for everything that we were supposed to have for
9 September. Everything that we asked for was mentioned in
10 discovery. In other words, we saw reference to an item of
11 discovery or a piece of evidence in the discovery that we
12 didn't have, so we -- we didn't go on some extra sort of
13 special hunt. We just said, hey, oh this page, it looks
14 like the officer used his body camera to capture
15 surveillance footage; where is that? On this page, the
16 officer says he went to Enterprise Rent-a-Car and captured
17 surveillance footage; where is that? On this page, the
18 Officer says he did a recorded interview with an unindicted
19 co-conspirator; where is that?

20 The State had sent to us in [REDACTED] that -- in
21 conversation -- and the State can correct me if I'm wrong,
22 but my recollection was they weren't going to give us a copy
23 of [REDACTED]'s statement because they were under some belief
24 that he was a juvenile. Like that -- there's no rule that
25 would exclude them or preclude them from giving that to us

[REDACTED]

1 anyway.

2 In any event, where are we today? So today we are
3 ten months after [REDACTED] has been held without bail. He
4 was incarcerated starting [REDACTED]. He was --
5 let's see, November 6th, we had one trial date, we were
6 postponed to this trial date, a very long period of time for
7 this gentleman to have been held without bail in what was
8 previously [REDACTED] and now at [REDACTED] here
9 in the City.

10 There seems to be, as [REDACTED] sort of framed
11 the question to me properly on Friday of this last week when
12 I got a bunch of discovery and took my laptop down to lockup
13 to go through as much of it as I could with him, and I'll
14 catalog for the record that much of what I'd gotten still
15 can't be opened yet, he said to me, Ms. Levi, like doesn't
16 the law matter? Like can they just do whatever they want?
17 And there is, admittedly, some like lack of sensitivity or
18 desensitization to the fact that an individual has been
19 sitting presumed innocent in one of the worst jails in the
20 country for ten months.

21 And I know that when we're going to walk in here
22 today somebody's going to say, well, isn't a postponement
23 just the right remedy. And like at what point do we say
24 just no, that's not the right remedy. That this man hasn't
25 been able to see, touch, feel his family, be near them for

[REDACTED]

1 ten months presumed innocent because nobody gave us the
2 discovery that was sitting at their fingertips. And I know,
3 if I had to think about why is that, it's probably because
4 nobody cared enough to sit down with the detective and say,
5 let's make sure we have everything. And I'm not impugning
6 anybody personally, right? It's just that we have become
7 desensitized to another individual sitting here in a yellow
8 jumpsuit who we don't know personally and it's just doesn't
9 matter. And like at some point it's got to matter. And I'm
10 not saying it doesn't matter to Your Honor, but this is the
11 only possible way that this could happen, because if we were
12 in another jurisdiction, if this was a federal case, people
13 sit down with their detectives in advance of the Grand Jury
14 testimony and say, let's make sure everything is in a nice,
15 neat package.

16 So let's talk about what we've been missing.
17 Court's indulgence for just one second. And I'm going to go
18 right to the motion to dismiss or exclude. And I know Your
19 Honor has read it, but for the benefit of the record, the
20 case for which [REDACTED] stands before Your Honor for trial
21 is a shooting that occurred on or about [REDACTED]
22 [REDACTED] On that -- near that time, an individual named Mr.
23 [REDACTED] had pulled into [REDACTED] in
24 Baltimore City to sell a large quantity, allegedly, of
25 marijuana. And while that transaction was going on or

[REDACTED]

1 perhaps a second transaction was going on, an individual
2 walked up to Mr. -- to the car that [REDACTED] is -- was
3 in. The individual who the State alleges to be [REDACTED]
4 was on the sidewalk and the individual right next --

5 THE COURT: Ms. Levi, give me one second. [REDACTED]
6 [REDACTED] can I help you?

7 [REDACTED] Your Honor, I -- well,
8 (indiscernible) had a violation of probation to this.

9 THE COURT: With me?

10 [REDACTED] No. I think it's Judge --

11 THE COURT: Who?

12 [REDACTED] I think it's [REDACTED], but
13 it's on the docket for [REDACTED] here and you called it.

14 THE COURT: Do what -- can we -- you want to call
15 [REDACTED]'s chambers and find out where [REDACTED]
16 [REDACTED] having her VOP docket today?

17 THE CLERK: Yes.

18 THE COURT: You have a chart?

19 THE CLERK: Yeah.

20 MR. CARTER: Thank you, Your Honor.

21 THE COURT: Sure. I'm sorry, go ahead, Ms. Levi.

22 MS. LEVI: No worries. So --

23 THE COURT: Large marijuana drug deal.

24 MS. LEVI: That [REDACTED] was about to engage
25 in. And the best -- if looking at it in the light most

[REDACTED]

1 favorable to the State, the evidence is that allegedly, [REDACTED]
2 [REDACTED] and two other individuals were standing at the top of
3 [REDACTED] They were hanging out in front of a house
4 for a good part of the day. And before the shooting, [REDACTED]
5 [REDACTED] and the shooter, who's still unidentified by the
6 police, are walking towards the vehicle and they both pull
7 their hoods up. The shooter continues with his hood up
8 while [REDACTED] puts his hood back down. [REDACTED] walks
9 to the sidewalk on the left side of the street. The car
10 continues down on the right side of the street. While [REDACTED]
11 [REDACTED] is standing on the sidewalk -- excuse me -- the
12 shooter goes up to the car to engage in some kind of
13 transaction and in broad daylight pulls out a gun and shoots
14 like six or eight times while the car then drives away.

15 Something falls to the ground. The individual
16 alleged to be [REDACTED] reaches down and picks it up, which
17 he gives a six-hour statement later to the police and says
18 it was a five dollar bill. He was poor. He didn't have any
19 money. He just picked it up. He had no idea that the man
20 wasn't alive. The man, [REDACTED], drives all the way
21 down the street, goes sort of around the corner and crashes
22 into the front yard of another car, where actually on body
23 camera the police officers walk up and he's alive. And
24 they're like, oh, he's breathing. See that, his arm is
25 moving. There's an ambulance about a block away and nobody

[REDACTED]

1 renders any aid.

2 Then that evening, the police execute a search
3 warrant at [REDACTED] where [REDACTED] was living at
4 the time. It was apparently for a narcotics investigation,
5 but because the homicide had occurred on the same day,

6 [REDACTED] goes also to the execution of the
7 search warrant, arrests [REDACTED], [REDACTED], and [REDACTED]

8 [REDACTED] --

9 (Counsel conferred with Client)

10 MS. LEVI: And in any event, brings them all down
11 to the station, charges them with illegal possession of
12 ammunition, finds no weapon in the house and is alleged to
13 have found a weapon behind the house in a sock in a bag.
14 The other piece of evidence that's allegedly -- in the light
15 most favorable to the State is that after the shooting, [REDACTED]
16 [REDACTED] and the shooter -- the shooter runs up [REDACTED]
17 [REDACTED], cuts through an alley. [REDACTED] also cuts through
18 the same alley, going in the back door allegedly to [REDACTED]
19 [REDACTED] where he was living. There were other people in the
20 street; we now know they also fled. We now know because we
21 got surveillance footage on Friday showing us that they also
22 fled in different directions, but fled, nonetheless.

23 So in preparing our discovery and preparing for
24 trial, we obviously wanted -- oh, and on [REDACTED]
25 [REDACTED] the police brought [REDACTED] in for a six-hour

[REDACTED]

1 interview. We didn't get that interview until Friday. The
2 six-hour interview -- the good portion of the six-hour
3 interview is about 25, 35 minutes and then they leave him in
4 the room for six hours while they go get a search warrant
5 for his DNA. Unfortunately, it's our practice that we have
6 to listen for the entire six hours because, as Your Honor
7 is, I'm sure, well aware, during that six hours they left
8 him with his phone, he'll pick up and make a phone call.
9 He'll mumble to himself. He'll say something out loud and
10 we have to listen to everything that happens in that period
11 of time. It tends to be where we actually get really good
12 pieces of information when people are left alone and being
13 recorded. So just because they only interviewed him for
14 about 25 to 35 minutes doesn't mean that I didn't have to go
15 over that six hours and then have to go over that six hours
16 with [REDACTED], and if that didn't give us rise to
17 different information. For example, some of the things in
18 there are that at the end of the interview, the detectives
19 come back in and say to [REDACTED], well, you've risen
20 from -- they call his father on his phone and they say
21 you've become from a person of interest to a suspect and
22 we're going to get your DNA and we're going to take your
23 phone, which is incredibly interesting because they didn't
24 even have a warrant for his phone, so when they left him
25 sitting there for six hours and they went to get a warrant

[REDACTED]

1 for his DNA, and they went into a courtroom and swore out a
2 warrant for his DNA, they didn't say one word about his
3 phone. So I actually think they stole his phone that day
4 because they didn't have any authority to take it. That's
5 troublesome for me.

6 [REDACTED] at the beginning of that
7 interview for the first time is like we are the cream of the
8 crop, the best of the best. You do not get to homicide
9 until you are the best in this agency, and my partner, 100
10 percent clearance rate. That's all for us, impeachment and
11 exculpatory. Whether you think it's the mountain of our
12 case or not, it's impeachment and it's exculpatory.

13 They didn't give us that [REDACTED] interview,
14 as I said, until Friday. We didn't get the search warrant
15 for [REDACTED] -- I'm sorry, on [REDACTED]. We
16 didn't get the search warrant for [REDACTED] DNA until
17 [REDACTED] Obviously, we want to see -- the
18 State's not even planning to bring him in to testify, but
19 he's a person of interest and now a suspect in this murder
20 that [REDACTED] is charged with. We want to see all the
21 information related to him and under 4263(d), any search and
22 seizure warrant in this case we are entitled to without
23 request -- 4263(d). And as Your Honor is well aware,
24 everything under 4263(d), not only are we entitled to it
25 without request, and as we said in the motion if you look at
[REDACTED]

1 the cross-reference, these aren't just rules, you know, for
2 the sake of Monopoly. These are rules that codify the
3 principles of due process and the right to a fair trial from
4 the Constitution in *Brady v. Maryland*, and *Giglio and Aggers*
5 (phonetic). That's what the notes of the rules say. This
6 is the playing field on which we play in order to abide by
7 the Constitution, and a violation of the rules is a
8 violation of [REDACTED]'s right to due process. There's a
9 reason we don't give these kinds of things on the Friday
10 before so when the Blu-ray CD doesn't open, right, we have
11 time to remedy that. And I have this thing called a bar
12 card that really says you have a set of professional rules
13 and responsibilities and obligations and ethical obligations
14 to your client and a constitutional duty to give him
15 effective assistance of counsel, and they have cut me off at
16 the knees. Whether I asked for it through a Motion to
17 Compel in August or I asked for it in May, they never gave
18 it to me until we fought for it.

19 The video that they gave us of [REDACTED]
20 testimony has redactions for over five minutes. What's
21 going on in that five minutes? Not only do I want to hear
22 what [REDACTED] had to say in the five minutes, but I want to
23 hear every single thing the detectives said to him in that
24 five minutes, 'cause the detectives are dropping all kinds
25 of nuggets for our case in that interview. The State's

[REDACTED]

1 going to proffer -- I'm going to proffer to you that the
2 State's going to say, well, that was his personal
3 information. Well, we're entitled to it unless they ask for
4 a protective order, and they haven't. It's not even in the
5 original format. We always get interviews in something
6 called Evidence Reviewer. It's not in Evidence Reviewer.
7 The State's extracted it and put it on some other format,
8 then redacted it and gave it to us like we're not the party
9 central to this case. We're entitled to that also under
10 4263, that recorded interview without request.

11 Then the Grand Jury testimony came on [REDACTED]
12 [REDACTED] In the Grand Jury testimony, [REDACTED]
13 [REDACTED] swears under oath to the Grand Jury that the
14 video shows [REDACTED] and the shooter walking up to the
15 rear of the car together and he gives the misimpression to
16 the Grand Jury that [REDACTED] was standing next to the car
17 when the shooter pulled the trigger. It is a material
18 misstatement to the Grand Jury, which would in and of itself
19 entitle us to a motion to dismiss based on the misstatement
20 to the Grand Jury.

21 I asked the State on Friday. The State had me over
22 to their office to blow up this video clip of [REDACTED]
23 pulling up his hood which then he takes down. Show me that
24 video clip where he walks up to the shooter's car 'cause I
25 bet that made a lot of difference to the Grand Jury rather

[REDACTED]

1 than saying, [REDACTED] was with the shooter earlier that
2 day. [REDACTED] walked towards [REDACTED] and then
3 he sat on the sidewalk while that man walked up to the car
4 and engaged in a drug deal. Nowhere in any video does [REDACTED] -
5 - and I said to the State on Friday, where is it? And he's
6 like, well, then he walks up to the rear of another car.
7 Right. There's another car sitting on the side of the road
8 before the shooting happens where [REDACTED] and the
9 shooter, if you believe that that's [REDACTED] in the video,
10 assuming that the State would make that ID, walk up to some
11 SUV parked on the other side of the road and then [REDACTED]
12 walks back to the sidewalk with his hands in his pockets.
13 He's hanging out while that guy goes around and shoots
14 somebody in broad daylight. Yeah, that's a bad fact, but
15 [REDACTED] didn't approach the car with him. Why does
16 [REDACTED] get to stretch the truth in that Grand Jury
17 testimony and why did the State hold onto it since [REDACTED]
18 [REDACTED]. The State -- the Court released it with
19 permission to give it to Defense Counsel. Maybe they
20 thought it was a material misstatement, too, and they didn't
21 us to see it. I don't know, but I know we didn't get it
22 until Friday -- Thursday, one business day before trial.

23 I've got to research and prepare a pleading for
24 that material misstatement to the Grand Jury and I haven't
25 had the time to do it because I'm trying to get through over
[REDACTED]

20 hours of body camera, prepare this motion to dismiss, and
101 pages of discovery, and see Mr. Dudley in jail. I don't
have enough hours in the day to hurry up and prep for all of
this.

The DNA search and seizure warrant, again, 4263(d)
without request from the Defendant, the State must give all
search and seizure warrants and anything obtained from the
Defendant, including his DNA. I didn't get that search and
seizure warrant until [REDACTED]

I didn't get [REDACTED]' search and seizure
warrant, that completely absence the State's confiscation of
his phone. The police has -- I've been wracking my brain
all the -- all weekend; I think that's a theft. There's no
general order in the police department that says you can
just take somebody's property without a warrant. He says
give it to me, I'm confiscating your phone. On the phone
with his dad, I'm taking the phone. I'm confiscating the
phone. He had no right to do that. If that guy committed a
theft, that's an act of dishonesty that I'm going to impeach
him with. I was entitled to that and I'm sure the State is
astute and saw it, too. We didn't get that more and absent
that confiscation of the phone, that's a prior bad act for
that detective, all of the detectives who held onto that
phone for all this time.

That's the next matter on the motion to dismiss or

[REDACTED]

1 exclude the -- under the DNA search and seizure warrants,
2 which I didn't include in there as missing any authority for
3 them to confiscate the phone.

4 The evening of [REDACTED], it's
5 referenced in the discovery that they executed a search and
6 seizure warrant. A detective -- the first name is [REDACTED],
7 I can't remember her last name, she indicates in a note in
8 the discovery that the execution of the warrant was for both
9 the homicide and a narcotics investigation. We asked for
10 the body-worn camera related to that and all of the returns
11 and the documents and -- it was generated under a different
12 CC and case number because [REDACTED] was subsequently
13 charged. It's in the discovery. There's no excuse for why
14 I didn't get that until [REDACTED]. All of the documents
15 related to the execution of that warrant, all of the
16 documents related -- it's exculpatory for us that they
17 raided the house that night and what they allege, [REDACTED]
18 was sleeping and didn't find anything except for some piece
19 of ammunition from another type of weapon behind a dryer.
20 like a shotgun shell or something like that. With all these
21 other people, the other cases were dismissed. [REDACTED]'s
22 case is -- was statted - don't know why. But everything
23 that happened in that interview and the recovery of the gun
24 is relevant to this case and when they don't find anything
25 inculpatory for [REDACTED], that becomes exculpatory for us,

[REDACTED]

1 and I didn't get that information again until [REDACTED].
2 The over 20 hours of body camera that I have,
3 there was -- it was sent to me over evidence.com. The last
4 -- there were five Evidence.com links sent to me. The last
5 Evidence.com link -- and that may have come a few days
6 before September 5th, I can't actually remember the date of
7 the Evidence.com link, I have it here, but in any event,
8 there was one -- the last Evidence.com link had actually --
9 it was so large it had two files in it. I let the State
10 know those two files won't open. I sent Your Honor a
11 screenshot on Friday, the State -- I said, either send it in
12 smaller chunks or just put it on a CD so we can see it. It
13 almost makes some kind of discovery harassment because every
14 time you get an Evidence.com link, you have to click
15 download, you have to wait at your computer until it
16 downloads. It can take -- I had to leave my computer open
17 and running overnight to get those five downloads to
18 download onto my computer. Came back in the morning and
19 they still weren't done. That's how long it takes. And on
20 Friday afternoon the State sent me -- when I said smaller
21 chunks, I didn't mean 36 separate Evidence.com e-mails -- 36
22 times I'm going to sit and click download the day we're
23 supposed to start trial when I'm trying to look through the
24 rest of everything else. That just can't possibly be
25 acceptable. I asked the State to put it on some other

[REDACTED]

1 format for me. The State then dumps it onto a CD, nearly
2 5:00 on Friday, brings it to our office on a Blu-ray CD.
3 The problem with the Blu-ray CD is nobody has Blu-ray
4 technology and I already told the State, I can't open the
5 Blu-ray CDs. There's 250-something pictures that the mobile
6 crime lab took of the day of the murder. I don't have any
7 of that. So the State put it on a Blu-ray CD and gave it to
8 me in Your Honor's Chambers on September 5th. I said, I
9 can't open this Blu-ray CD. He's like, well, the file's so
10 large that's all we could put it on. Nobody has a Blu-ray
11 player in my office. I even brought two computers home this
12 weekend, plus my own personal computer and two external CD
13 players to try to open those Blu-ray CDs, no luck. I can't
14 get through all of that body camera if I can't even open it.
15 And you could say, well, Ms. Levi, look, it's not the
16 State's fault that your office doesn't have Blu-ray
17 technology, but it's not our fault that we've only had like
18 72 hours to deal with it, right? It's like my best friend
19 from law school said, this is why they aren't supposed to
20 give it to you the day before trial, because when this kind
21 of thing happens, you need time to correct it. So if I got
22 to go out and buy a Blu-ray CD player on my own dime so I
23 can represent [REDACTED], I need time. And time is not
24 acceptable when all of this has generated and been in
25 existence since [REDACTED] and we're in [REDACTED]

[REDACTED]

1 [REDACTED] having this discussion.

2 Surveillance footage from [REDACTED] on
3 [REDACTED], BPD [REDACTED] captured
4 surveillance footage from a civilian security system on his
5 body camera referenced again in discovery. I got that
6 [REDACTED]. That is exculpatory for us for at least
7 three different reasons.

8 The mobile crime lab processed the victim's car on
9 [REDACTED]. I still don't have any of the
10 documents from the processing of the mobile crime lab. They
11 dusted it for prints. They dusted it for DNA. There was an
12 individual -- [REDACTED], so we'll start back where we
13 were in the beginning, allegedly is the one who initiates
14 the contact for [REDACTED] to come down [REDACTED].
15 He texted him in the morning for a drug deal. He texted him
16 again for a drug deal. Not [REDACTED]. There's no
17 reference of [REDACTED] allegedly on [REDACTED]' phone. It's
18 [REDACTED]' who's having this conversation with [REDACTED]
19 [REDACTED] Hey, come down. Hey, come down again. We want
20 some more weed. An associate of [REDACTED]' gets into the
21 victim's car and that individual -- so lots of theories
22 about how this man or why this man came into the street --
23 the individual who hops into the car then gets out of the
24 car after the shooting. They dusted for DNA; nobody's
25 identified that person. I don't have the results from the

[REDACTED]

1 DNA and the prints from that car. I'd like to see it. I
2 think we're entitled to the full picture of exactly what
3 happened that day and whose associate was whose and what was
4 going on inside of that car.

5 The State's response to my motion to compel says,
6 and this is dated [REDACTED], this is Subsection G.
7 I asked for all lab reports related to the processing of the
8 victim's car. "The State has contacted the BPD lab and is
9 still waiting on the reports but has been advised that the
10 State will be in receipt of the same by this afternoon,
11 [REDACTED]" Unless they're on a Blu-ray CD that I
12 can't open, I don't have them.

13 The Enterprise Rent-a-Car surveillance footage,
14 that was from -- pulled [REDACTED]; again, we
15 asked for that back in May. We got that on [REDACTED],
16 except one of the CDs that the State gave us contained six
17 separate files and it was blank. It wouldn't open, so they
18 re-burned it and gave it to us again, I think, on Friday
19 afternoon.

20 There's a quote in our motion -- and I talked to
21 the State candidly. I don't ask anybody to hold me
22 personally, I don't -- to take anything personally and I
23 don't mean anything personally against anybody from [REDACTED]
24 [REDACTED]'s office. There is a problem systemically when the
25 State's Attorney's Office does not sit down with the police

[REDACTED]

1 department or says, well, they put it under a different CC
2 number and I couldn't find it or they didn't bring it to me.
3 Nobody's sitting down and saying, well, where's all this
4 discovery so we can get it to Defense? That's Problem No.
5 1.

6 Problem No. 2 is this idea that the State has said
7 to us over and over again is, well, this case comes down to
8 the video and you have it. And I don't know if that's a
9 training problem or what that is, but maybe the State's case
10 come down to the video and we all have it, but our case is a
11 totally different story. And the rules codify everything
12 we're supposed to get and we're not supposed to have to
13 scavenge for it, and yet, in every single case, I have to
14 scavenge. And I know every case is not before Your Honor,
15 but this case is and this gentleman has been sitting held
16 without bail and locked up. Could any of us imagine what
17 that feels like? Ten months of your life. Coming to trial,
18 he's like, are you kidding me that we don't have all this
19 stuff? They haven't given it to us? Like and to what end?
20 Well, Ms. Levi, it's okay. You'll get a postponement. I
21 don't want a postponement. I want to send a message to them
22 that this is a human being with a life and his life matters,
23 and that's why we have a Hicks Rule. And that's why we have
24 a constitutional speedy trial rule. And somebody's got to
25 get it together.

1 This is a quote in my motion from -- although the
2 DC Circuit -- I do believe it's important -- or the Ninth
3 Circuit, I apologize. "When a public official behaves with
4 such casual disregard for his constitutional obligations and
5 the rights of the accused, it erodes the public's trust in
6 our justice system, and it chips away at the foundational
7 premises of the rule of law. When such transgressions are
8 acknowledged yet forgiven by the Courts, we endorse and
9 invite their repetition." We endorse and invite their
10 repetition. There are certain places where people are not
11 yet desensitized to the prolonged pretrial detention,
12 particularly of men in America, and this case is of no
13 exception. It wouldn't be the first time that I had a case
14 dismissed for a discovery violation -- it would be the
15 second, because it's very rare that a Court actually makes a
16 meaningful sanction when the State hasn't done its job.

17 I have had another severe, egregious sanction
18 imposed in front of the Judge formerly in charge of criminal
19 who excluded all of the BPD officers, the BPD detectives who
20 were withholding exculpatory information from us. And I
21 have had a case dismissed, an attempted murder -- both of
22 those were attempted murders for failing to produce
23 discovery.

24 [REDACTED] and I talked about it on Friday and
25 we're both somewhat resigned to the very sad fact that, at a
[REDACTED]

1 minimum, we'll walk out of here with a postponement because
2 I can't do my job for him if I haven't had a chance to
3 review everything. And I guess I just say, for the record,
4 that at some point that has to be unacceptable. I can't ask
5 for a bail review for him because of this? He has a VOP.
6 So it's of no moment to us to get a bail review unless we do
7 a bail review on the VOP. If the Court wants to let him out
8 and give us a postponement, fine. Let him come into my
9 office and sit with me and watch those 20 hours of body
10 camera. Do you know how hard it is to do in the jail?
11 They're probably 30 hours. I haven't been to open the Blu-
12 ray CDs yet. I'm guessing it's 30.

13 Let him out. Let him come into my office and help
14 me prepare for this trial. Let him help me go back to the
15 crime scene and let's find the shooter ourselves. The State
16 hasn't gotten the shooter in this case and that's what they
17 want and candidly, what they should be going after. The
18 officers had a clearance rate. They arrested this man. I
19 can't think of any other reason except that maybe nobody
20 just seems to care. Court's indulgence.

21 THE COURT: When is the next date with Judge
22 [REDACTED]?

23 MS. LEVI: Pardon?

24 THE COURT: When's the next date with [REDACTED]
25 for the VOP?

1 MS. LEVI: I feel like it's not until [REDACTED],
2 but I can't --

3 (Counsel conferred with Client.)

4 MS. LEVI: [REDACTED].

5 So that's sort of where we are. Obviously,
6 exclusion is not the appropriate remedy when I haven't seen
7 everything, right? Like if there's exculpatory information,
8 exclusion doesn't help us, it hurts us. So I stand before
9 Your Honor at the Court's mercy. I would ask the Court to
10 impose a sanction of dismissal. I would -- the State
11 doesn't dispute that he's not even the shooter in this case
12 and that, at best, he pulls up his hood and runs away after.
13 I would ask the State to exclude -- the Court to exclude all
14 the BPD officers because there's some problem with BPD also
15 not getting it together and giving it to the State here, and
16 there has to be sanction for that. And, as a last resort, I
17 need time.

18 (Counsel conferred with Client.)

19 THE COURT: Thank you, Ms. Levi. [REDACTED].

20 [REDACTED]: If I may, Your Honor? And Your
21 Honor, I'll -- with the Court's permission, if I just may
22 take some time to go through the historical or chronological
23 order of the filings of Defense.

24 Your Honor, there was a supplemental discovery
25 request that was filed [REDACTED] for which the

[REDACTED]

1 Defense requested any and all body-worn camera footage
2 captured at the scene on [REDACTED] related to the
3 above-captured case. Your Honor, we've been talking about
4 the 36 body-worn-camera videos that were disclosed promptly.
5 I will note, additionally, that the May 17th, State's -- the
6 Defense supplemental request for disclosure, the State did
7 receive on August 28th or the State's Attorney's Office did
8 receive the filing of the motion to compel. I was away,
9 Your Honor, for an extended period of time during the summer
10 months. I did receive it. I did promptly, as soon as I was
11 able to obtain it, send it in five broken up Evidence.com e-
12 mail attachments in order to make it easier to download. I
13 was -- Ms. Levi did make me aware that the 36 -- it was
14 unable to be downloaded. I then went through individually
15 and sent each link separately just thinking that,
16 inevitably, one link shouldn't pose any problem to open it
17 up. Ms. Levi -- I think at the same time, we were kind of
18 corresponding by way of e-mail, also suggested the
19 recommendation, if possible, to deliver it to her before the
20 close of business on Friday, the same, on discs, which I did
21 do, and I hand-delivered to the Office of the Public
22 Defender. I can't speak to the medium that we transmitted
23 information. The age of technology is great; however,
24 unfortunately, with these camera videos, normal CDs or the
25 DVD-R disc that we used, they just don't have the

[REDACTED]

1 capability. So a Blu-ray disc has like a 25 gigabyte
2 capacity which I provided along with the mobile photos which
3 were compressed and put onto a disc. Again, technology, I
4 can't speak to what the Public Defender's capacity is;
5 however, this is not the first case where Blu-ray discs have
6 been sent to the Public Defender's Office and they have
7 opened.

8 In that same May 17th filing, any and all of
9 Detective Moore's body-worn camera footage that captured the
10 video surveillance from unnamed resident living in the [REDACTED]
11 [REDACTED]. There was video camera footage of
12 video camera footage from [REDACTED]. In the State's
13 initial disclosures, in the supplemental initially provided
14 in this case, there were two pertinent camera angles that
15 the State was aware of that [REDACTED] provided as part
16 of his folder. There was video camera footage from a
17 private residence at [REDACTED] and then there was a gas
18 station at the mouth of [REDACTED] capturing the
19 initial clips of the Defendant, or who the State believes to
20 be the Defendant through the identification of the civilian
21 witnesses in this case, and the unknown shooter, along with
22 a third individual meeting prior to the victim's arrival
23 into the block by way of a car. All these camera clips were
24 disclosed to Counsel. The body-worn camera clip of
25 [REDACTED] and the body-worn cameras initially that

[REDACTED]

1 were tagged under the central complaint number for this
2 associated homicide investigation were sent by way of a
3 body-worn camera link. There were 13 videos. However,
4 [REDACTED], based on the motion to compel, we are
5 digging more thoroughly through it, that video was never
6 tagged. It was never tagged under a CC number for this
7 case. It was never tagged under the central complaint
8 number for the narcotics investigation that generated the
9 search and seizure warrant for 502. It was just kind of
10 floating out there.

11 And while I would agree with Ms. Levi that the
12 Defense shouldn't have to hunt for this nor should the
13 State, but the State -- it's the State's onus and the State
14 takes responsibility as law enforcement, whatever agency is
15 involved in the investigation, that is still within the
16 purview of the State. However, that was provided to Ms.
17 Levi promptly upon receiving the motion to compel, which the
18 State has satisfied. The timeliness of it, obviously, the
19 Court has discretion with respect to all these disclosure
20 requests and the information provided to make a
21 determination as to what is the proper remedy for Defense,
22 but I will satisfy with the Court that the State has
23 satisfied that component. I will additionally note that, as
24 I indicate to many detectives through the course of
25 investigations, video of video isn't coming in, and the

[REDACTED]

1 video footage, I'll proffer to the Court, is from the corner
2 house at [REDACTED], which is the route of travel that the
3 unknown shooter, and who we believe to be the Defendant,
4 running through this alley. Now, that is also captured on
5 clear footage that was initially provided to Counsel from
6 the gas station.

7 I will just briefly tell -- touch on the Grand
8 Jury testimony, or at least the transcript. The State did
9 make a motion for the release of the same. Again, it --
10 that fell through the cracks, Your Honor. I can't provide
11 you with a reason as to why the State withheld it nor was it
12 malicious intent. The State's intention all along was to
13 disclose everything that the State has in its possession.
14 The characterization of what Ms. Levi has described as
15 potential perjurous information that she would use to cross-
16 examine [REDACTED], the lead detective and the
17 presenter in this case, I will just note that it is listed
18 in the transcript that -- verbatim -- while the victim was
19 sitting inside his car in the middle of the street, two
20 black males, one of which was later identified as the
21 Defendant, [REDACTED] his SID No. is -- which is State
22 Identification Number [REDACTED] date of birth: [REDACTED]
23 approached the victim's car from the rear. That's the
24 statement that I believe Counsel has issue with, but that's
25 subject to interpretation, and primarily has to do from the
[REDACTED]

1 investigative piece of going through the video, looking at
2 both the Defendant's actions and the unknown shooter's
3 actions well before the victim's vehicle even gets into the
4 block, but leading up to the actual shooting itself, which is
5 actually captured on the private residence camera. I -- you
6 know, again Your Honor, I've watched the video. I know Ms.
7 Levi came to my office. I even opened up the video on a
8 player called the GOM Player where you have the opportunity
9 to zoom in. Again, reasonable minds can differ and I'll
10 leave that evidence as, you know, as Ms. Levi see it,
11 obviously, for an opportunity to cross-examine the
12 detective, but the State doesn't see it, respectfully.

13 Your Honor, as to the third thing from the
14 supplemental discovery request, any and all videos,
15 surveillance footage from the Enterprise Rent-a-Car located
16 at [REDACTED], again, this is a tagging issue. I know
17 one of the issues that the State initially had in May was
18 with this small (indiscernible). The police department did
19 not have respective e-mails. We also were unable to get
20 some of the information from BPD that presented a number of
21 problems. The State did receive video footage that
22 [REDACTED] pulled, burned onto discs, provided to the
23 State to give to Defense. When Ms. Levi notified me that
24 one of the discs that contained six files did not have the
25 files, I promptly contacted [REDACTED]. I did get that

[REDACTED]

1 information that was hand-delivered to Ms. Levi's office on
2 --

3 THE COURT: [REDACTED] I'm hearing
4 a lot of excuses, okay, which is fine. I -- there are --

5 [REDACTED]: I'm sorry, Your Honor. I'm just
6 trying -- I'm trying to go through each one --

7 THE COURT: Okay.

8 [REDACTED]: -- just because --

9 THE COURT: Okay. I mean, but could we agree that
10 there's a timeliness issue?

11 [REDACTED]: The State is not disputing that,
12 Your Honor.

13 THE COURT: Okay.

14 [REDACTED]: I would agree with you as to that.

15 THE COURT: And could we agree that the discovery
16 -- that Thursday and Friday's discovery dump is a lot to go
17 through for a Monday case?

18 [REDACTED]: It is for both parties, Your Honor.

19 THE COURT: Okay.

20 [REDACTED] I would agree.

21 THE COURT: So what is your suggestion to cure
22 this problem, [REDACTED]?

23 [REDACTED]: Well, Your Honor, I think that 4263,
24 again, which sets forth sanctions that the Court has
25 discretion in entertaining, I do think that a dismissal of

[REDACTED]

1 the nature of the charges in this case is a very extreme
2 measure, especially given the fact that the State has made
3 every attempt, per the motion to compel, that has been
4 received and some of the information, even in the motion to
5 compel, was no longer -- was never in existence. So the
6 State has gone above in even making -- asserting that all
7 the information that that Ms. Levi and her office has
8 requested has been provided, including the somewhat
9 unrelated but related case information pertaining to [REDACTED]
10 [REDACTED]'s ammo and possession charge that was statted and the
11 State even went one step further and provided Ms. Levi with
12 -- technically it's ASA work-product, but the stet nolle
13 pros forms for [REDACTED] and the two other people charged
14 in that case, and the reasons noted on the form as to why
15 each of those cases were resolved in that manner.

16 Your Honor, the Defense's filing includes motion
17 to exclude. Again, as far as a postponement goes, Ms. Levi
18 and I did discuss possible dates. I did note to her my
19 trial schedule with the number of specially sets, and I'm
20 open and I've cleared it with the State's witnesses for
21 [REDACTED]. Per the State's review, this case, again,
22 even with the additional discloses that the Defense has, the
23 State is really looking at seven witnesses here. And the
24 evidence for the State rests really solely with the
25 identification of the Defendant made on the video and the

[REDACTED]

1 photo arrays. There are two civilian witnesses that the
2 State would intend to call and there's five law enforcement
3 witnesses, and that includes the medical examiner. But this
4 is really -- and I'm not taking away from the fact that the
5 State's characterization of the case, but this case really
6 rests on the arguments made with the interpretation of the
7 video as to what [REDACTED] was doing before and after the
8 shooting.

9 But Your Honor, I do thing that a reasonable
10 remedy in this particular case, in light of the discovery
11 provided would be a short postponement 30 days out for
12 October -- for the case to start on October --

13 THE COURT: [REDACTED] is more than 30 days out.
14 [REDACTED]: Well, I -- Your Honor, respectfully,
15 I have a specially set trial [REDACTED]
16 [REDACTED], and I start another specially set
17 [REDACTED] So I -- if I could squeeze it in beforehand
18 -- and I did suggest to Ms. L- -- excuse Ms. Levi the week
19 of [REDACTED] I believe she may have a conflict with
20 that, but I -- that is kind of where I'm at scheduling wise.

21 (The Court conferred with the Clerk.)

22 THE COURT: Yeah, continue, I'm sorry.
23 [REDACTED] So, Your Honor, the date selected
24 isn't one where I'm looking for just a normal 30-day course,
25 Your Honor. It primarily has to do -- I just can't try two

[REDACTED]

1 cases at the same time. And all these cases that are set
2 have been set. The orders have been set -- unless the
3 reception court seeks to move those, but the State has
4 witnesses all lined up for those cases.

5 THE COURT: And does the State have an objection
6 to a bail review for [REDACTED]

7 [REDACTED] I would note the State's objection
8 on the record. Factually, again, this is also one where --
9 and the State will concede, he's not the shooter, and I
10 don't think there's any dispute as to that from the get-go.
11 I will note my objection for the record. In light of the
12 nature of the charges in this case -- in light of the fact
13 that the Defendant was on probation at the time of the
14 alleged occurrence before [REDACTED] and the -- while the
15 conviction for his [REDACTED] conviction, it was an
16 assault first and use of a firearm in the commission of a
17 crime of violence, the nature of the underlying charge that
18 he was on probation for, regardless of whether or not he's
19 the shooter, the allegation of impropriety and the
20 connection of him involved in a broad-daylight -- a morning
21 shooting, obviously is significant -- excuse me, significant
22 enough to raise the possibility that the Defendant is a
23 threat to public safety, Your Honor. So speaking to the
24 bail review, I would still object for the record, Your
25 Honor.

[REDACTED]

1 But as far as the sanctions, go, Your Honor, I do
2 think that the postponement is a proper remedy. If a
3 postponement is denied, the exclusion of evidence, you know
4 -- and the State, again, it's the State's onus and burden to
5 --

6 THE COURT: All right, well, but I mean, exclusion
7 of the evidence, I mean, this is -- it's not really the
8 issue because it seems like most of the discovery violations
9 pertain to evidence that you probably weren't going to use
10 anyway, but may be exculpatory from Ms. Levi's --

11 [REDACTED] Yeah.

12 THE COURT: -- point of view.

13 [REDACTED] And look, this is a case where the
14 Defendant is charged with conspiring with others. [REDACTED]
15 [REDACTED] -- would the State like to present him on the witness
16 stand? Yes, but realistically he has a Fifth Amendment
17 privilege against self-incrimination here. But that -- the
18 suggestion of the [REDACTED] date, Your Honor, I do think
19 is appropriate. I think it would give Counsel an
20 opportunity to at least see it, Your Honor. I don't know
21 what the Court's schedule or the discretion of the Court --

22 THE COURT: It wouldn't be me regardless, but I
23 had her go check if there's even a judge available on

24 [REDACTED]

25 [REDACTED] Yes, Your Honor.

[REDACTED]

1 THE COURT: Because I see there are no retired
2 judges available. I don't know if there are any active
3 judges available.

4 [REDACTED] And Your Honor, again, I -- the
5 State has the case that I am starting on the 15th. It is
6 set to wrap up on the 18th, so I have -- and it's been
7 cleared with the State's witnesses. I can start as early as
8 the 21st. The only other thing I could suggest to Your
9 Honor, I just -- I don't think I can -- I start a case on
10 the 16th. It's a high-profile -- [REDACTED] murder. I think
11 realistically I'll be done by the 20th. We've been given
12 seven days before [REDACTED]. I have a two-day window on
13 the 25th and the 26th, but then I'm set to start trial on
14 the 27th in front of [REDACTED]. So that's the two-day
15 window I have, Your Honor.

16 MS. LEVI: Thank you, Your Honor. I will say --
17 look, I do a statewide advanced litigation training three
18 times a year. The last two I've had to forego my section
19 because it's the only time the State is available. I'd like
20 to fulfill my obligation for this important staff obligation
21 that I have and that is the week of the 21st. I can't
22 continue to find a replacement. That would be the third one
23 for the entire year that I haven't been able to present at.

24 THE COURT: Well, we're just talking about a week
25 different. It's not --

[REDACTED]

1 MS. LEVI: Right. Right. Right. I mean, I've
2 made the record on the fact that the postponement is really
3 of no help to us because it doesn't send the message --
4 also, from that Ninth Circuit case, the Court talks about
5 the fact that, "If a police officer acts surreptitiously or
6 negligently, it may make the State prosecutor's job nearly
7 impossible, but the prosecution has the responsibility to
8 seek out the evidence and provide it to the Defense. The
9 police department that plays cat and mouse with the evidence
10 ought to be swiftly sanctioned, lest the Court be complicit
11 in the wrongdoing." That's the Ninth Circuit talking. So
12 if we just say, okay, it's fine. Just give her another
13 month or so, what are we teaching them? And really this
14 argument that is like, I can't wrap my brain around it -
15 [REDACTED] is a threat to public safety? [REDACTED] who was
16 standing on the sidewalk while some rogue individual, who
17 they have a clear face shot of, stands on the side of the
18 road next to an individual and kills him? And ask [REDACTED]
19 [REDACTED] what are they doing to find him? The only reason
20 [REDACTED] is sitting here is 'cause they can't find him and
21 'cause they closed their case with a clearance rate. Want
22 to talk a threat to public safety? That's like an
23 abomination. That guy's walking around on the street and
24 nobody's doing anything to haul him in because they're
25 clearance rate is met and this guy is sitting here. For

[REDACTED]

1 that reason alone, we ought to be throwing the flag. And
2 maybe if we dismiss this case those officers would be forced
3 to get out there and start huffing it and go find who that
4 guy is. That's the threat to public safety. Really?

5 Not a single Lotus note in this case, between the
6 time [REDACTED] was arrested 'til today, what they're doing
7 to find that shooter. Any other BOLOs circulated in the
8 community? Anybody going back to that lab, knocking on the
9 door, taking those pictures, putting it through facial
10 recognition software? They have that. Nothing. He may
11 have been the one committing -- I don't know, five of ten of
12 the last murders of the last month and nobody's doing
13 anything and this guy standing on the sidewalk is a threat
14 to public safety? I mean, some days we just wake up in this
15 City, in this office and say, we can't win because like we
16 can't win. I mean, a postponement is not a rational remedy
17 for us. It just prolongs mass incarceration of impoverished
18 people in Baltimore City. That's all it does. And it says,
19 okay, fine. Don't bother to do your job from the beginning,
20 Mr. Police Officer -- Mr. Police Officer --

21 THE COURT: Right, but the problem is, Mr. -- Ms.
22 Levi that the normal remedy, which is exclusion of the
23 evidence, is not what you're seeking.

24 MS. LEVI: Right. So exclusion of the officers.
25 [REDACTED] did it. [REDACTED] (phonetic) excluded the

[REDACTED]

1 entire case. We were pretrial motions on an attempted
2 murder and shooting, live victim ready and willing to
3 testify. The police officers withheld evidence. [REDACTED]
4 [REDACTED] (phonetic) said enough. I'm dismissing the case for
5 this discovery violation because at some point it gets too
6 bad. *State v. Kerron Andrews*, Judge Peters said enough.
7 I'm excluding all the officers. I'm excluding the officers
8 who withheld the exculpatory evidence. They -- he said it
9 takes their breath away.

10 THE COURT: But -- okay. But you don't -- Ms.
11 Levi, the problem is you don't know that this is exculpatory
12 evidence. You want --

13 MS. LEVI: Excluding --

14 THE COURT: -- the information to see if it's
15 exculpatory.

16 MS. LEVI: But I'm -- excluding the officers --

17 THE COURT: No, but it -

18 MS. LEVI: -- is a different remedy.

19 THE COURT: -- it -- I understand that but what
20 you're saying is is that this evidence that was not given to
21 you is exculpatory. You don't know that.

22 MS. LEVI: The evidence that I do have, already, I
23 can generate exculpatory information from all the evidence
24 that I do already have. For example, the surveillance
25 footage of the surveillance footage, that's exculpatory for

[REDACTED]

1 us. The State's really clinging to what direction [REDACTED]

2 [REDACTED] --

3 THE COURT: But you have that.

4 MS. LEVI: Right. I have that now, yes.

5 THE COURT: Right.

6 MS. LEVI: Right.

7 THE COURT: Okay. So the things that you have not
8 been able to look at, right, you can't tell this Court
9 affirmatively that it's exculpatory.

10 MS. LEVI: Sure. Right. No doubt.

11 THE COURT: Okay. So that makes it different than
12 those other cases.

13 MS. LEVI: No. I think the -- okay, I guess on
14 one level it does, but on another level I think the tipping
15 point for the Court was just like the egregiousness of it,
16 right, because if it had just been the only the one and
17 early on, it would not be a big deal, but at some point it
18 sort of has this cumulative response.

19 THE COURT: And those cases of the State got a
20 postponement before?

21 MS. LEVI: [REDACTED] had been held for a year
22 when we discovered the negative photo arrays, and [REDACTED]
23 probably also a year. We were in trial posture when we
24 discovered the surveillance footage had been doctored.

25 THE COURT: Okay. That's also slightly different

[REDACTED]

1 then, right?

2 MS. LEVI: Uh-huh.

3 THE COURT: Okay. So there are distinctions?

4 (The Court conferred with the Clerk.)

5 THE COURT: The Court's going to take a brief
6 recess.

7 [REDACTED] Yes, Your Honor.

8 THE CLERK: All rise.

9 (Court conferred with the Clerk.)

10 THE CLERK: All rise.

11 (WHEREUPON, at 10:23 a.m., proceedings recessed to
12 reconvene at 10:33 a.m.)

13 THE CLERK: All rise. Circuit Court for Baltimore
14 City, [REDACTED] will now resume the session. The [REDACTED]
15 [REDACTED] presiding.

16 THE COURT: You may be seated, sir.

17 (The Court conferred with the Clerk.)

18 (The Clerk conferred with the Bailiff.)

19 LADY IN GALLERY: It's cold in here.

20 THE COURT: Freezing. Absolutely freezing. And
21 then some courtrooms you go to and they're so hot, you can't
22 breathe. It -- there's just no rhyme or reason.

23 MS. LEVI: Can I have the Court's indulgence for
24 just one second?

25 THE COURT: Uh-huh.

[REDACTED]

1 MS. LEVI: Can you -- we turn the husher on?

2 (Counsel conferred with client.)

3 THE COURT: Is there something I should know?

4 MS. LEVI: No.

5 THE COURT: Okay. All right. So obviously, there
6 is an issue as far as the discovery. I think it's very
7 clear that there is a timeliness issue. I -- again, I don't
8 believe it was intentional from the State. Unlike most of
9 us normal people, we didn't get a month off for August and
10 most of us were working all August, so I don't think that it
11 was intentional, but again, I do think that it was unfair to
12 Ms. Levi and [REDACTED] -- [REDACTED] to have all this
13 information dumped on them, you know, the eve of trial.

14 There -- you know, I do see, as I pointed out, I
15 do see distinctions between the cases that Ms. Levi was
16 referring to. Although [REDACTED] has been incarcerated for
17 a long period of time, it's not as long as a period of time
18 that Ms. -- that the other two cases that Ms. Levi were --
19 pointed out and the fact that this information is not
20 necessarily even exculpatory. We -- you don't even know
21 enough about the information to make that determination. So
22 I do not believe that a motion -- granting him a motion to
23 dismiss in this case is appropriate.

24 Now, normally, you would exclude the evidence.
25 However, if there's a belief that the evidence is

[REDACTED]

1 exculpatory, that doesn't benefit the Defense; it benefits
2 the State. So that's not the appropriate remedy. So the
3 Court in this case believes that a postponement is
4 appropriate, but as you all know, the Court does not have
5 the power to grant a postponement. That has to be done by
6 [REDACTED] So I have notified her. She is expecting you.
7 I will tell you up front, that I have told her that I would
8 be willing to entertain a bail review. I also reached out
9 to [REDACTED] and I believe that he would also be willing
10 to entertain a bail review, but I don't think Judge -- I
11 think [REDACTED] would like to see you all first.

12 MS. LEVI: Okay.

13 THE COURT: Okay? So --

14 MS. LEVI: We're on the fifth floor --

15 THE COURT: She's right here --

16 MS. LEVI: -- if -- now, okay.

17 THE COURT: Yeah. So could you take him right
18 next door? She's expecting him. It's literally next door.

19 [REDACTED]: So you're not --

20 THE COURT: It's next door. What room is that
21 (indiscernible)?

22 MS. LEVI: [REDACTED]

23 THE COURT: [REDACTED]

24 MS. LEVI: Like right around the corner to the
25 left.

[REDACTED]

1 THE COURT: Right around the corner.

2 [REDACTED]: So Your Honor, it's the State's
3 understanding that the Court is denying this -- the
4 Defense's motion to dismiss?

5 THE COURT: Yes.

6 MS. LEVI: But finding discovery violation and
7 granting at this moment a postponement per the
8 Administrative Court's permission?

9 THE COURT: Exactly.

10 MS. LEVI: Okay.

11 THE COURT: And I will be waiting here for you all
12 to come back.

13 MS. LEVI: Pardon?

14 THE COURT: I'll wait here to see what happens.

15 [REDACTED]: Thank you, Your Honor.

16 MS. LEVI: So can I leave some stuff here? Are we
17 -- 'cause we're coming back?

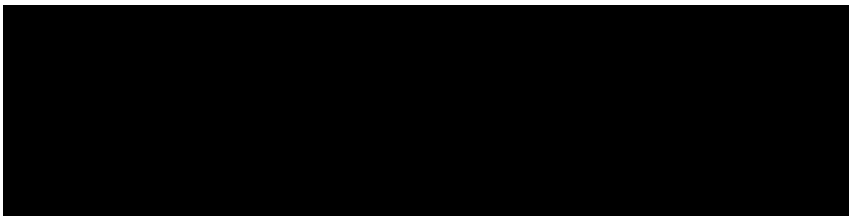
18 THE COURT: You can if you like. Yeah.

19 MS. LEVI: It's okay. Does she know the posture
20 of the discovery issue so?

21 THE COURT: I -- well, I couldn't give her all the
22 details, but I've given her -- she understands --

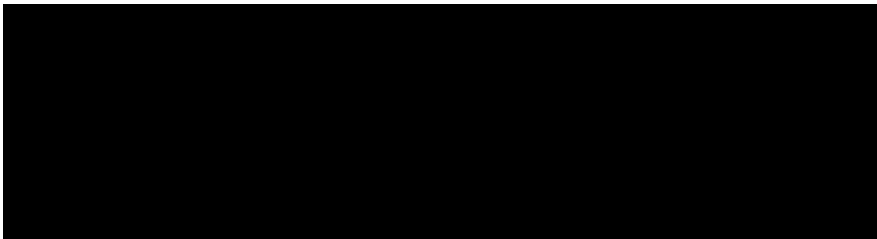
23 MS. LEVI: I just want to know --

24 THE COURT: -- that there was a large discovery
25 dump.



1 MS. LEVI: Okay.
2 THE COURT: On (indiscernible) eve. Yes.
3 MS. LEVI: Okay.
4 THE COURT: Yes.
5 (Whereupon, at 10:38 a.m., the proceedings
6 concluded.)

7 -oOo-



CERTIFICATE OF TRANSCRIBER

I hereby certify that the proceedings in the matter of *State of Maryland v. [REDACTED]*, Case No. [REDACTED], heard in the Circuit Court for Baltimore City, Maryland on [REDACTED], was recorded by means of digital recording.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 45 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness whereof, I have affixed my signature this [REDACTED].

[REDACTED]

[REDACTED]

Exhibit 2

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND,

vs.

Case No.:

[REDACTED]
Defendant.

OFFICIAL TRANSCRIPT OF PROCEEDINGS
(MOTION)

Baltimore, Maryland
[REDACTED]

BEFORE:

APPEARANCES:

For the State:

For the Defendant:

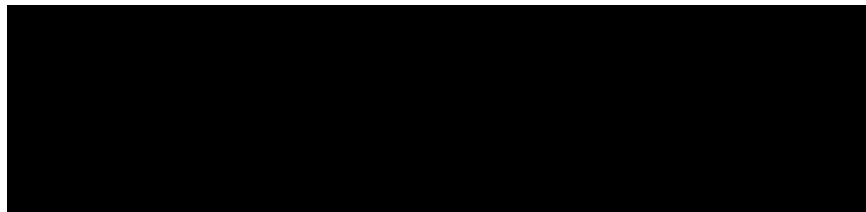
DEBORAH LEVI, ESQUIRE
[REDACTED]

Electronic Proceedings Transcribed by: [REDACTED]
[REDACTED]

C O N T E N T S

	<u>P a g e</u>
RECORD OF PROCEEDINGS	M-3
MOTION TO DISMISS OR EXCLUDE	
BY MS. LEVI	
BY [REDACTED]	M-42
BY [REDACTED]	M-7
COURT'S RULING	M-83
STATE'S EXHIBITS	FOR IDENTIFICATION IN EVIDENCE
NO. 5 (VIDEO CLIPS)	M-83

-oOo-



P R O C E E D I N G S

(10:52 a.m.)

MS. LEVI: Pardon?

THE CLERK: All rise.

THE CLERK: All rise. Circuit Court for

is now in session. The Honorable

presiding.

THE COURT: Please be seated everyone.

(The Court conferred with the Clerk.)

THE COURT: All right. Good morning and we're

back on the record in the case of *State v.*

you're going to be a gentleman again today?

THE DEFENDANT: Yes, ma'am.

THE COURT: Then please unshackle him. Thank you.

For the record, representing the State?

Good morning, Your Honor,

for the State.

THE COURT: Good morning. And with you?

PIU, Police Integrity Unit.

THE COURT: Thank you for coming.

Thank you, Your Honor.

THE COURT: Good morning. And on behalf of the
Defense?

MS. LEVI: Good morning, Your Honor, Deborah Levi

1 on behalf of [REDACTED] who's to my left and [REDACTED] --

2 [REDACTED]

3 THE COURT: Good morning.

4 MS. LEVI: Excuse me -- good morning.

5 THE COURT: And good morning, [REDACTED]

6 THE DEFENDANT: Good morning.

7 THE COURT: You may be seated. So on Friday,
8 before we could do anything, we decided to hear all
9 preliminary motions and we got as far as on the Defense
10 motion with regard to items that Ms. Levi indicated the
11 State had not disclosed or that the State had disclosed but
12 late or in violation of the discovery rules or, in some
13 instances, not in their entirety, meaning she felt that she
14 received partial items of evidence from the State but that
15 she knew there was more. I think an example of that would
16 be the statements of two witnesses but not the recorded
17 statements of those witnesses, which in court on Friday [REDACTED]
18 [REDACTED] actually handed over.

19 When we concluded the day, I expressed to all
20 Counsel that I was mostly concerned with whether or not, as
21 we proceeded forward today, the Defense was going to be
22 prepared. Much can be made of why we have something called
23 ineffective assistance of counsel. You can try a case, as
24 you well know, but if counsel has not had those items that
25 the rules provide that they're entitled to, it hampers or

[REDACTED]

1 interferes with their preparation. The State doesn't get to
2 try to figure out what the Defense is going to do with the
3 information that they turn over or provide, but the rules
4 just require that it be turned over so that the Defense can
5 develop its theory of the case and a defense, and also so
6 that the Defense can prepare to meet any challenges that
7 that evidence may show or indicate, as well as investigate
8 the items of evidence that's turned over by the State,
9 again, to be prepared and to effectively assist. The Court
10 is also mindful, in doing that, the responsibility of a
11 defense attorney is also to advise his or her client of the
12 possible outcomes; the strength of the State's case; any
13 witnesses that may be summoned or subpoenaed; any evidence
14 that could be produced; assist in making a decision as to
15 whether to plead guilty or entertain a guilty plea; to take
16 an Alford Plea where you don't say you did the crime, but in
17 the face of the evidence you decide that you're going to
18 accept a "deal." Do you want a jury trial? How is the
19 evidence going to factor into 12 lay people from the
20 community versus an election of a jury -- a court trial?

21 All of these and others are part of the rubric of
22 those items that factor into a defense attorney's ability to
23 be prepared, hence my comment to Counsel on Friday that on
24 today I needed first to make sure that all the information
25 has now been received by the Defense; (2) that there's no

1 more out there that the Defense has not received; and with
2 that information having been received, whether Ms. Levi felt
3 that she could proceed to trial and effectively represent
4 her client. Some would say, Judge, it's not your concern
5 whether or not Ms. Levi is effective or ready or prepared.
6 I'm a Judge that believes that defense counsel should always
7 be effective, ready, and prepared, for my job is not just to
8 move cases to get it done. My job is to ensure justice is
9 done in my courtroom regardless of the outcome. And so if I
10 hear from defense counsel that she's not prepared or ready,
11 I find -- need to find out how much time does she need. And
12 hence, that was the last part of what I was saying that I
13 would follow up with on Friday. I state this and make this
14 record because [REDACTED], as I indicated on Friday, I do
15 not believe that you intentionally, egregiously with any
16 malice failed to disclose information. I believe that you
17 were doing a yeoman's job of preparing and meeting your
18 discovery obligations, but there simply was information that
19 was not turned over, whether it was that you didn't know
20 about it, you didn't have it, or the general search of
21 information drew you to conclude that what you had given her
22 was -- everything in its entirety; 1B, it would be an
23 example of what I'm talking about. It was only after
24 reviewing the actual full footage did you discover that
25 there was something more on the full footage that was not on

[REDACTED]

1 the clips that you turned over. That is date-stamped
2 information, time-stamped information which, as Ms. Levi
3 presented to the Court, made the whole thing make sense once
4 she saw the full footage, where the clips left a lot for her
5 legal consideration, right down to whether or not the clips
6 could even be admitted without the date and timestamp. And
7 if you're sizing up your case and you think the State has
8 something but they can't prove it 'cause they can't get it
9 admitted, that's going to factor into your advice to your
10 client, hence your motion to exclude that evidence because
11 she said she didn't think they could get it in,
12 authenticate.

13 And so, with that said, my first question to the
14 State is were you able to turn over any additional
15 information other than what I saw in the courtroom? In
16 other words, was there anything more that you were able to
17 garner, that you ended up turning over to her? I know that
18 you said you had a couple things, like the tape recording of
19 the six-hour tape of the witness where the first part of it
20 has been chopped off or had been redacted. Were you able to
21 get that to her?

22 [REDACTED] I did. And Your Honor, actually at
23 the conclusion of the hearing on Friday --

24 THE COURT: You gave it to her?

25 [REDACTED] -- I had the disk and I had just --
[REDACTED]

1 Ms. Levi didn't have a flash drive accessible but I provided
2 her with the complete copy of [REDACTED]' disk.

3 THE COURT: And that's [REDACTED]
4 correct?

5 [REDACTED] Correct, Your Honor.

6 THE COURT: Okay. And what else?

7 [REDACTED] Your Honor, per the Court's
8 instruction, as it pertains to the [REDACTED]
9 [REDACTED] the JIS System didn't have anything uploaded
10 into it reflecting any of the guilty finding --

11 THE COURT: I'm not surprised. The Clerk's Office
12 may be a little behind.

13 [REDACTED] I did contact the Chambers of [REDACTED]
14 [REDACTED] though, who handled the matter. He did -- [REDACTED]
15 of his chambers did provide me with two true test copies.
16 These are the handwritten docket entries reflecting the
17 disposition -- well, excuse me, the guilty finding along
18 with the disposition which has -

19 THE COURT: That's sufficient as a matter of law.
20 [REDACTED] -- been held -- secure.

21 THE COURT: And that's what I asked you to bring.
22 Thank you very much.

23 [REDACTED] Your Honor, the Court --

24 THE COURT: And the guilty finding on that was as
25 to perjury and malfeasance, or just one or the other?

[REDACTED]

1 MS. LEVI: Both counts.

2 [REDACTED] There were two counts. Yes, Your
3 Honor.

4 THE COURT: Okay.

5 [REDACTED] Misconduct in office and the
6 perjury.

7 THE COURT: All right. Next thing.

8 [REDACTED] Your Honor also inquired in the
9 course of the hearing on Friday about records that the State
10 requested, the Metro PCS records for a phone number. I did
11 include -- these were on a disk. Everything that was sent
12 to me from T-Mobile as it pertained to a respective cell
13 phone [REDACTED] there was a in re -

14 THE COURT: And who's phone is that?

15 [REDACTED] That was Mr. Jobes', Your Honor.

16 THE COURT: Mr. Jobes' phone, okay.

17 [REDACTED] And there was a in re special
18 investigation subpoena that I had the Grand Jury sign off
19 on. That was -- they signed off on it on [REDACTED]

20 [REDACTED] It was true tested [REDACTED] It was
21 forwarded to T-Mobile. Everything that T-Mobile sent me was
22 disclosed on via disk. Counsel asked me, though, and the
23 Court inquired --

24 THE COURT: To print it out?

25 [REDACTED] As to the date range that I'd
[REDACTED]

1 requested.

2 THE COURT: Uh-huh.

3 [REDACTED] Now, the date range that the State
4 requested was [REDACTED] through [REDACTED]

5 [REDACTED] The --

6 THE COURT: I'm sorry. [REDACTED]

7 [REDACTED] Through [REDACTED]

8 THE COURT: [REDACTED]

9 [REDACTED] So that was the State's request for
10 information from Metro --

11 THE COURT: T-Mobile?

12 [REDACTED] Correct. Now, the Metro PCS
13 custodian of records did indicate description of the records
14 that were sent back in a digital format with a start date
15 complying with what the subpoena had requested. The records
16 that they had sent back, though, Your Honor, I tell you, per
17 my review again, was only one page, so the State is not in
18 possession of anything other than what they sent back as is
19 defense as it pertains --

20 THE COURT: And what's the date on the one page?

21 [REDACTED] It's [REDACTED]

22 THE COURT: So it looks like they only printed out
23 the one day?

24 [REDACTED] They -- well, they only sent me
25 digitally -

[REDACTED]

1 THE COURT: The one day?

2 [REDACTED] -- the one day, so the State is not
3 in possession of anything prior to that. That's what was
4 disclosed.

5 THE COURT: Okay.

6 [REDACTED] Unfortunately, Your Honor, I'm -

7 THE COURT: Which -- but is that -- but that's not
8 what you requested?

9 [REDACTED] That is not what I requested, yes.

10 THE COURT: Okay. And the date of the incident
11 was?

12 [REDACTED]

13 THE COURT: Was the [REDACTED] the day before. So you
14 were trying to encompass things leading up to and then
15 ending the day after?

16 [REDACTED] Correct.

17 THE COURT: Okay. Got it.

18 [REDACTED] There was also a request, Your
19 Honor, for any text message correspondence from any officers
20 or detectives on the scene.

21 THE COURT: Right.

22 [REDACTED] Now, the State had a generation of a
23 list. It not only incorporated everyone mentioned, all the
24 officers in the text as mentioned in the voir dire, but also
25 incorporating all the officers with a body-worn camera.

[REDACTED]

1 Now, what I've learned and it was a --

2 THE COURT: It was a lot.

3 [REDACTED] I did --

4 THE COURT: I know. Go ahead.

5 [REDACTED] -- a search, and I personally called
6 as many people as I could. [REDACTED] the
7 primary investigator, also assisted me. What I learned and
8 what I'm providing to Counsel is screened shots, they're
9 totaling nine pages. The first six pages, [REDACTED]
10 [REDACTED] was the supervisor from Homicide that was on
11 scene.

12 THE COURT: [REDACTED]

13 [REDACTED]

14 THE COURT: [REDACTED]

15 [REDACTED]

16 THE COURT: Uh-huh.

17 [REDACTED] When I -- per my conversation with
18 the Lieutenant, he advised me that based on his search of
19 his departmental cell phone, there were text messages that
20 he sent out advising his [REDACTED] those are
21 reflected in pages 1 through 6. I also disclosed on page 7
22 -- and this is where, I guess, the information is as
23 follows: The first supervisor on scene as it pertains to the
24 homicide, because we're actually talking about two separate
25 kind of -

[REDACTED]

1 THE COURT: Correct.

2 [REDACTED] -- events both --

3 THE COURT: Understood.

4 [REDACTED] -- that day --

5 THE COURT: Understood.

6 [REDACTED] -- was [REDACTED] He
7 was the Northern District patrol supervisor.

8 THE COURT: [REDACTED]

9 [REDACTED] Yes, your --

10 THE COURT: [REDACTED] Uh-huh.

11 [REDACTED] I had contacted him because there
12 was body-worn camera footage showing his phone. There was
13 an application on his phone that he can -- you can see
14 somewhat in the camera angle, but throughout the course of
15 his reporting he does state that he was putting and posting
16 the victim's information on a GroupMe application. Now, I
17 don't know if the Court is aware as to what GroupMe is --

18 THE COURT: I do know what it is.

19 [REDACTED] It is this forum that I believe many
20 of the districts utilize where there's a chain where the
21 supervisors use it to advise (indiscernible) staff --

22 THE COURT: Sound blast it to everybody under
23 their --

24 [REDACTED] So information was put in by

25 [REDACTED] Now --

[REDACTED]

1 THE COURT: When you say information, is it
2 relevant or probative to this case? Information is like now
3 everybody can take lunch at 2:00, we're going to meet at
4 Pollock Johnny's; or is it information that's relative to the
5 investigation and case before this Court?

6 [REDACTED] Relative to the case before the
7 Court, Your Honor.

8 THE COURT: Uh-huh.

9 [REDACTED] So the information as indicated on
10 his body-worn camera is -- and the Sergeant actually states,
11 I just put the victim's information on GroupMe. He
12 indicates that he's actually holding the cell phone and
13 advised another officer on scene that he put the information
14 on GroupMe. The GroupMe application, because it's used on a
15 daily basis by each district -- and in the Northern District
16 with the chain that [REDACTED] is on, he and another
17 supervisor, [REDACTED] I had the opportunity
18 to speak with because I was trying to see whether or not
19 they could screenshot, much like [REDACTED] did, any
20 of the correspondence that he typed up. The difficulty with
21 this is every time they search back, because it's an active
22 chain, any time there's a new posting it automatically
23 reverts back to the first posting. So [REDACTED] had
24 gone back to September of this year, and then it reverted
25 back to someone who had just posted something within like a
[REDACTED]

1 minute of him checking.

2 THE COURT: Okay. But my question is -- you said
3 that [REDACTED] put information about the victim on the
4 GroupMe.

5 [REDACTED] Correct.

6 THE COURT: What do you mean information about the
7 victim? The fact that someone had been shot; the location,
8 or some other information about the victim?

9 [REDACTED] So [REDACTED] who
10 participated in the second event, with the --

11 [REDACTED] Yes.

12 [REDACTED] -- search and seizure warrant, I
13 brought to her attention, because in my inquiry with all the
14 officers and detectives --

15 THE COURT: Right.

16 [REDACTED] -- whether she had anything, too.
17 She was actually able, because the Northern District Intel
18 and Investigation Section has a GroupMe Forum, as well.

19 THE COURT: Uh-huh.

20 [REDACTED] She forwarded me the -- what the
21 Sergeant had posted and it's dated [REDACTED]
22 that's reflected on page 7. And Your Honor, I have --

23 THE COURT: You have a --

24 [REDACTED] -- a copy for -

25 THE COURT: -- extra copy for me?

[REDACTED]

1 [REDACTED] I do.

2 THE COURT: Would you -- have you given it to
3 Counsel?

4 [REDACTED] Counsel has --

5 THE COURT: Counsel has a copy? And let the
6 record --

7 [REDACTED] Just got it.

8 THE COURT: -- reflect that we're going to mark
9 this -- I believe this is State's --

10 [REDACTED] This would be State's 3.

11 THE COURT: -- 3?

12 [REDACTED] Well, State's 1 and 2, I believe --

13 THE COURT: 3.

14 [REDACTED] -- were the videos.

15 THE COURT: Yeah, so this would be 3.

16 THE CLERK: That would be 3.

17 THE COURT: Okay. And this is -- first page just
18 says [REDACTED] at the top and then there's timestamps,
19 p.m., looks like [REDACTED] and then they're postings.

20 [REDACTED] And everything from page 1 through 6
21 is what [REDACTED] posted.

22 THE COURT: Okay. Let the record reflect the
23 Court is reviewing -- I'm at page 4, Ms. Levi, where there
24 is a description of what it appears -- [REDACTED] is
25 relaying --

[REDACTED]

1 [REDACTED] This is what [REDACTED] is
2 receiving. So this -- the message --

3 THE COURT: Received from?

4 [REDACTED] [REDACTED]

5 THE COURT: Gotcha. And --

6 MS. LEVI: What's Jones' first name?

7 [REDACTED] It's --

8 THE COURT: [REDACTED]

9 [REDACTED] [REDACTED]

10 THE COURT: And then page 7 is -- looks like
11 [REDACTED] forwarded some information.

12 [REDACTED] Correct.

13 THE COURT: And [REDACTED] -- and -- okay.

14 And there's information that goes on. Was the sum and
15 substance of State's 3 contained in any other Lotus notes,
16 generated police reports, or other information in this case,
17 or is it uniquely in this document that I have in front of
18 me?

19 [REDACTED] It's uniquely in the document,
20 subject to though, the body-worn camera of Sergeant McGriff.

21 THE COURT: Of course.

22 [REDACTED] He's relaying the information
23 because the information that the Sergeant is relaying, he is
24 then receiving the same from officers on scene. So he's
25 asking them as to the name --

[REDACTED]

1 THE COURT: Information?

2 [REDACTED] -- of the victim?

3 THE COURT: But they're details in here that I am
4 observing that would not necessarily be on the body-worn
5 camera. For example, crime scene 1 in the street between
6 [REDACTED] there is auto glass, four .9 mm casings;
7 crime scene 2 -- I mean, there's information that had to
8 have been collected --

9 [REDACTED] Correct, Your Honor.

10 THE COURT: -- by the officers and then relayed.

11 [REDACTED] And that information is on the
12 respective body-worn cameras collectively, in reviewing
13 them, because [REDACTED] the primary officer who's
14 designated the primary officer --

15 THE COURT: Right.

16 [REDACTED] -- is walking the crime scene --

17 THE COURT: But he didn't write a report, though,
18 did he?

19 [REDACTED] [REDACTED] did write a report.

20 THE COURT: Did he?

21 [REDACTED] He did.

22 THE COURT: He wrote a report?

23 [REDACTED] He did.

24 THE COURT: But some of the information contained
25 in here was not in his report; that's what you're saying?

[REDACTED]

1 [REDACTED] Well, it's --

2 THE COURT: It's uniquely in this particular
3 document?

4 [REDACTED] Somewhat, Your Honor. I would still
5 make the case that it's -- if there's overlap, but as to the
6 specifics of what -- how [REDACTED] wrote it, then no.

7 THE COURT: Gotcha. All right. Anything else?

8 [REDACTED]: Your Honor, as it pertains to these
9 text messages -- and if I can just go through the list to
10 make a record of what I did and who I contacted.

11 [REDACTED], the primary investigator,
12 he and I had a number of conversations. I did inquire as to
13 whether or not he had any text messages pertinent to this
14 investigation on that date or if at the crime scene. I will
15 proffer to the Court, [REDACTED] didn't actually
16 respond to the crime scene within the hour of the response
17 because -- it was actually Lieutenant -- I'm sorry,

18 [REDACTED] (phonetic), [REDACTED].
19 There comes a point where the Lieutenant actually shows up.
20 So he's actually not part of the initial response.

21 He also did advise me that he no longer possesses
22 the departmental phone that he had back then, but there were
23 no text messages to his knowledge. Detective -

24 THE COURT: Well, he would not have been on the
25 scene.

[REDACTED]

1 [REDACTED] Correct.

2 THE COURT: Okay. All right.

3 [REDACTED] He's on the scene afterwards.

4 THE COURT: Later, no -

5 [REDACTED] But not with the initial --

6 THE COURT: -- not in the same quality and detail

7 --

8 [REDACTED] Correct.

9 THE COURT: -- as State's Exhibit's No. 3.

10 [REDACTED] Yes, Your Honor.

11 THE COURT: Or 3 -- yes.

12 [REDACTED] I did contact [REDACTED]

13 [REDACTED] I would proffer to the Court his only involvement in
14 this case was the administration of photographic arrays. He
15 advised me that he has no related text messages as it
16 pertains to this incident or case. He did not respond to
17 the scene. I did talk --

18 THE COURT: Before you move on --

19 [REDACTED] I'm sorry.

20 THE COURT: And all handwritten notes from the
21 photo array have already been turned over -

22 [REDACTED] Correct.

23 THE COURT: -- if there were any?

24 [REDACTED] Correct. And he did not make
25 anything other than --

[REDACTED]

1 THE COURT: The progress note?

2 [REDACTED] The progress report was done --

3 THE COURT: Excuse me -- progress report.

4 [REDACTED] -- was done by Detective -

5 THE COURT: -- and then ultimately we had the --

6 [REDACTED] -- [REDACTED]

7 THE COURT: -- the recorded statement which you
8 now turned over?

9 [REDACTED] Correct, Your Honor.

10 THE COURT: Okay. Anything else?

11 [REDACTED] I did reach out and get in touch
12 with [REDACTED] He was on scene. He
13 advised me, they're -- per his phone, he has no text
14 messages. It only goes back as -- so far as November of
15 2018. I did inquire if there was anything else, but the
16 response that he gave me was he has no text messages as it
17 pertains to this.

18 I then touched base with [REDACTED]
19 (phonetic). [REDACTED] was not on scene in this case.
20 [REDACTED] was in a interview with [REDACTED]
21 But as it pertains to the text messages, she also does not
22 have any text messages related to this investigation.

23 [REDACTED] was given a list similar
24 to mine of people to get in touch with. I'll proffer to the
25 Court, [REDACTED] had a conversation with [REDACTED]

[REDACTED]

1 [REDACTED] there comes a point in
2 time when [REDACTED] does arrive at the scene after
3 [REDACTED] Per [REDACTED]
4 conversation, as he advised me November 2nd, per her review
5 there were no text messages related to this investigation
6 after checking through her phone. I did speak with
7 [REDACTED]

8 THE COURT: Can you spell that last name for me?

9 [REDACTED]
10 THE COURT: Oh, [REDACTED]
11 [REDACTED] yes, Your Honor.

12 THE COURT: Uh-huh.
13 [REDACTED] I spoke with him yesterday in the
14 afternoon. Per [REDACTED] he has no text messages
15 related to this investigation even though he was on scene.

16 I did reach out to [REDACTED]
17 [REDACTED] and I spoke over the weekend
18 and actually this morning. [REDACTED]
19 was not on scene. He was not the supervisor. He was the --
20 he's the supervisor for the unit, the respective cohort of
21 Homicide Detectives, but because [REDACTED] was
22 there, he was actually on another crime scene.

23 [REDACTED] I did confirm with him
24 later in the day on [REDACTED] He did respond. He
25 did advise me that he had sent messages -- text -- via text

[REDACTED]

1 to [REDACTED] Those are the ones that he
2 screenshotted to me and sent me the same.

3 [REDACTED] (phonetic) was the -- at the
4 time was working for the Cyber and Electric Crimes Unit. I
5 did ask him about whether or not he sent any text messages
6 as it pertained to the video retrieval in this case. He
7 advised me that he -- there was no text messages on his end
8 as it pertains to this. All of his reports pertain to the
9 video recovery forms that were filled out by him.

10 I did then talk to [REDACTED] [REDACTED]
11 [REDACTED] was one of the first responding officers on
12 scene. He advised me that per his check he has no text
13 messages in his phone as it pertains to this investigation.

14 I did then next talk to [REDACTED]
15 [REDACTED] is on the crime log. He is another
16 responding officer. Still works for the Northern District.
17 He advised me that per his check of his cell phone, there
18 are no text messages related to this case on that day while
19 at the crime scene.

20 I then spoke to, as I advised the Court, [REDACTED]
21 [REDACTED] When I spoke
22 to both of the Sergeants, that is when I was advised as to
23 the scrutiny application. I inquired further about whether
24 anything was sent out in light of [REDACTED]
25 statements on his body-worn camera. They both checked for
[REDACTED]

1 me as they were swirling back. [REDACTED] advised me
2 that the only thing that he had as it pertained to [REDACTED]
3 [REDACTED] dated back to [REDACTED] that's as
4 far back as he could search. Now, that's just because with
5 the Northern District patrol supervisors, I don't know if
6 because of the volume of the information that's constantly
7 going out, but that is what I --

8 THE COURT: It only goes back so far?
9 [REDACTED] That is what has been advised to me,
10 however, there may -- I don't know, I'm not too familiar
11 with GroupMe because it is not law enforcement specific. I
12 believe Microsoft is (indiscernible) --

13 THE COURT: There may be a search menu where you
14 could go back.

15 I have a question. What was the highest ranking
16 officer that you spoke to, the Lieutenant?

17 [REDACTED] Well, the information, not for me,
18 was [REDACTED] who was on the scene.

19 THE COURT: And did you explain to the Lieutenant
20 why you were making this inquiry?

21 [REDACTED] I was.

22 THE COURT: And you explained to him the
23 significance of the information that you were seeking?

24 [REDACTED] I did.

25 THE COURT: And did you explain to him why the
[REDACTED]

1 Court might require that this information be disclosed, not
2 only to you, but to the Defense?

3 [REDACTED] I did, Your Honor.

4 THE COURT: Is that a conversation that he's going
5 to have with his supervisor?

6 [REDACTED] I believe this is a conversation
7 that -- from my understanding -- and [REDACTED] -- I
8 -- he, I think even made the representation that he's not as
9 tech-savvy -

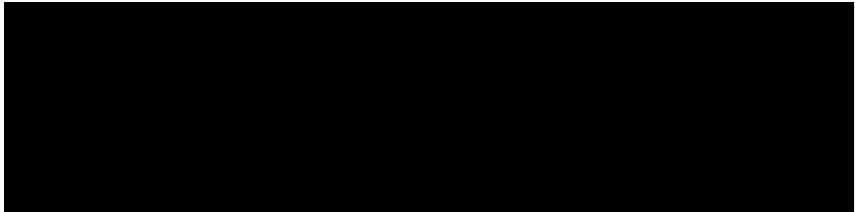
10 THE COURT: As the others.

11 [REDACTED] -- but in my conversations, with all
12 candor to the Court, with the sergeants within the patrol
13 division of the Northern District, I think this is an issue
14 that they have raised just as it pertains because the
15 department wishes or the command staff and respective
16 districts wants the information out as quickly as possible
17 and they want to be advised, the supervisors were advising
18 me that there's some reluctance because there's always the
19 possibility that because the information is coming in so
20 quickly, there may be some things that aren't necessarily
21 correct with the initial dissemination --

22 THE COURT: I don't doubt that in any way. I'm
23 not -- that's not what I mean. The police department, by
24 the nature of what they do, needs to act quickly and
25 efficiently in gathering information and data when crimes

[REDACTED]

1 are occurring and to communicate with the respective
2 officers, patrol and otherwise as quickly as possible.
3 However, in doing so, the standard operating equipment
4 that's authorized is the type of information and
5 communication that you, as a prosecutor, seek when trying to
6 meet the discovery disclosure requirements of the Maryland
7 Rules. When the law enforcement entity creates another
8 vehicle for information to be and communication to be
9 disseminated thereby, they then add to the list of things
10 that you have to search, and by them not telling you about
11 it or preserving the information, they hamper your ability
12 to meet your responsibility and they are part of your team,
13 which is why it is crucial that a conversation exist and be
14 had between the individuals responsible for ensuring that
15 there is some consistency in the police department over the
16 type of equipment they're using, the manner of it, and the
17 preservation of it so that when circumstances of this import
18 show up, that you're able to meet your obligations. If that
19 does not occur, then justice is going to be thwarted by the
20 fact that there has not been this diligence by the police
21 department to preserve certain information. Ms. Levi is
22 correct. This information, as we can see, is crucial for
23 her to have in examining how this event occurred,
24 particularly where this circumstance appears to be almost
25 exclusively captured on video of some sort, or cameras.



1 Having a clear and a very distinct and descriptive
2 recitation as to what was scene on scene when the first eyes
3 got to the crime scene, is very, very important, not only
4 for you in trying to put your case together, but for the
5 benefit of the Defense. So apart from this case, I would
6 urge you and your supervisors to consider having a
7 discussion. I don't work for the State's Attorney's Office
8 or the Police Department, but I'm urging you to have that
9 conversation because I think it's important.

10 [REDACTED] And Your Honor, I did bring this to
11 the attention of my folks within my own respective Homicide
12 Unit. I do know that -- I believe that the sergeants within
13 Homicide have had this discussion about this.

14 THE COURT: Right.

15 [REDACTED] Again, with my understanding of how
16 these chains work, there can be a number of separate chains.
17 It could be a chain of the patrol supervisors. It could be
18 a chain of command staff, you know, we tend to hire. It can
19 be, you know, so there are a number -- much like chasing
20 leads but the information that I've received, at least from
21 all the supervisors I spoke to, is that the information
22 that's posted because it is viewable by command staff, is
23 one where it's fairly direct, straightforward -

24 THE COURT: Right.

25 [REDACTED] As it pertains to the shooting,
[REDACTED]

1 it's, you know kind of the --

2 THE COURT: And maybe they can establish some kind
3 of a protocol that when the command staff sends out
4 something that they automatically cc a file that it goes to.
5 I mean, I don't know. I'm just saying. I will tell you
6 years ago. the big problem was when we would have raid teams
7 that would come in and testify that they were told to stay
8 off the main channel because it was interfering with other
9 operations and then they all would use their personal cell
10 phones. I mean, I remember that clearly, and then that
11 became like a uh, that's not a good idea and then they, you
12 know, they switched to other means, and I, you know, in this
13 day and age of technology there's so many different ways you
14 can communicate, this being one of them. But thank you.

15 You were talking about your final conversations
16 with [REDACTED]

17 [REDACTED] Yes, Your Honor. Well, there's a
18 listing of a number of other officers --

19 THE COURT: Okay.

20 [REDACTED] -- as it pertains, if I could just
21 keep going down --

22 THE COURT: Please do and make your record.

23 [REDACTED] So as with [REDACTED]
24 and [REDACTED] neither of them were able to
25 actually provide me with any screenshots of what [REDACTED]

[REDACTED]

1 [REDACTED] had sent out. That information, which is contained
2 in pages 7 and 8 of the packet -- the supplemental packet
3 was actually provided to me by [REDACTED]
4 [REDACTED] didn't respond to the fatal shooting, but
5 she was part of the second event which was the search and
6 seizure warrant at [REDACTED] Now, I did inquire with
7 [REDACTED] she did advise me that she had a
8 departmental phone back then. She advised me that she still
9 has the same phone today. When I asked her for the request
10 as to what I was seeking, she did check her departmental
11 phone. She indicated it went back to [REDACTED] or she
12 went back to the time frame around this. It had [REDACTED]
13 [REDACTED] an entry unrelated to this, but then the next
14 message was from [REDACTED] but it wasn't
15 pertinent to this search and seizure warrant of the
16 shooting.

17 I did ask her, though, when I brought to her
18 attention about the GroupMe, just because with her status as
19 Sergeant, whether she, too, utilized GroupMe and perhaps if
20 she used it back then on that date. That's page 9 of the
21 packet. That's when she provided me with the -- it's ND --
22 it's noted ND Operations. There was a posting that she had
23 posted to the ND Operations GroupMe chain where it's noted
24 Sergeant Street A. One sergeant, five officers will be
25 working the [REDACTED] and keep lower (indiscernible)

[REDACTED]

1 [REDACTED] in our sites. Thursday nights are the typical
2 time for street robberies to occur. So that is what she was
3 able to go back and pull up and screenshot for me --

4 THE COURT: Which doesn't appear to be unrelate --
5 is -- appears to be unrelated to the shooting in that it was
6 -- these are robberies, but we don't know from the theory of
7 the Defense whether or not this other shooting was an actual
8 "robbery." I'm putting robbery in quotation marks. But it
9 does also show that that's all she had.

10 [REDACTED] And that is the screenshot that she
11 forwarded me. I brought to her attention my conversation
12 with [REDACTED] and I asked her,
13 you know, the information that [REDACTED] sent out,
14 which he identifies as GroupMe, I asked whether she received
15 that or if she, too, had the ability to search for it. Now,
16 the search application, at least what has been conveyed to
17 me, is one where there's not a search bar where you can
18 search for key terms, it's just manually scrolling through
19 this. And the State is not aware, unless I speak to GroupMe
20 representatives, that I can obtain records of this any other
21 way --

22 THE COURT: Right.

23 [REDACTED] -- than screenshot.

24 THE COURT: And that's -- for another discussion.
25 I -- let the record reflect that my request of you ended

[REDACTED]

1 about 4:00 Friday. So -- and today's Monday morning at
2 10:30. So I think that you, so far, appeared to have done
3 quite a bit of gathering of information to meet my concerns.

4 [REDACTED] So --

5 THE COURT: You had more.

6 [REDACTED] So what the Sergeant did provide me,
7 though, is she provided me with the screenshots of what was
8 forwarded by Sergeant McGriff and that was dated [REDACTED]
9 [REDACTED] The time was 3:07 p.m. I guess when he --
10 the information was forwarded, but that's reflected on pages
11 7 and 8 and that, per my conversation with [REDACTED]
12 when I was just running through the list, he was like, oh,
13 that's the information I posted. So that is -- while
14 [REDACTED] didn't pull that and screenshot it, he did
15 verify that is the same information that he posted in
16 conjunction with this.

17 I did talk to [REDACTED] [REDACTED]
18 is another Northern District officer who did arrive at the
19 scene of the fatal shooting. He advised me that per his
20 check of his departmental phone, there were no text
21 messages, and none that he could even recall sending or
22 receiving. Because of the -- I guess, the delineation
23 between officers and supervisors, I believe what [REDACTED]
24 [REDACTED] sent, as he was explaining it to me, was sent to
25 everyone above him and the other sergeants.

[REDACTED]

1 I did also speak to [REDACTED] He's
2 no longer with the department. He works for the federal
3 government now, still in the law enforcement capacity, but
4 he advised me that per his recollection of this he responded
5 but he didn't send out any text messages or receive anything
6 as it pertained to the fatal shooting.

7 [REDACTED] (phonetic) I was able to get in
8 touch with, still works at the Northern District. Per
9 [REDACTED]'s check through [REDACTED]'s departmental,
10 there were no text messages related or pertinent to this
11 incident.

12 [REDACTED] who was at the Northern
13 District at the time is now assigned to the Academy as an
14 instructor, advised that there were no -- he did have a
15 departmental phone. There were no text messages on his
16 departmental phone per his check. He did indicate, though,
17 and he actually went back and reviewed his body-worn camera,
18 there was a text message that he sent out but that was on
19 his personal phone, but the text was a non-related and
20 personal issue.

21 The other officers that we were able to verify,
22 [REDACTED] and that's [REDACTED]
23 [REDACTED] is no longer employed with the Baltimore City
24 Police Department, but there weren't any text messages
25 related to that officer.

[REDACTED]

1 [REDACTED] is an officer that was
2 part of the Northern District Action Team, so this was the
3 second incident or the second event that evening. Per
4 [REDACTED] and my conversation, the officer advised
5 me he did have a departmental cell phone, but there were no
6 text messages after his checking of the scene related to
7 this.

8 [REDACTED] and I spoke earlier this
9 morning. I was finally able to get in touch with him. He
10 advised me he's no longer with the Northern District Action
11 Team. He's actually with the range at Gunpowder. He
12 advised me he has a new phone as of [REDACTED] I
13 asked him whether -- if with the receipt of new phones if
14 it's some sort of like information sharing app where all of
15 your text messages kind of transfer over, but he checked as
16 far back as he could go and found it was [REDACTED] He
17 doesn't recall if there were any text messages sent by him
18 on that day.

19 I did get in touch with [REDACTED]
20 [REDACTED] he, too, was part of the underlying second
21 event with the search and seizure warrant. He advised me
22 that he has a new phone as of [REDACTED] much like
23 [REDACTED] He checked back, there's no text
24 messages as it pertains to this event.

25 [REDACTED] was a Northern District
[REDACTED]

1 officer who arrived on scene at the first event of the fatal
2 shooting. He did advise me that he's on GroupMe for patrol
3 officers; however, he also broke down that the supervisors
4 and command staff have other information, but he did not
5 have any text messages nor was there a GroupMe app that he
6 pulled up that he could see anything.

7 [REDACTED] is still with the Northern
8 District Action Team under a different sergeant, indicated
9 to me that he had the same departmental cell phone. After
10 the check of the same, he advised me that there were no text
11 messages that he could find related to the [REDACTED]
12 [REDACTED] search and seizure warrant at [REDACTED]

13 There were other officers that kind of came into
14 the scene after the fact. There was an [REDACTED]
15 [REDACTED] She was the wagon transportation officer for the
16 Northern District. She arrived later in the evening after
17 the search and seizure warrant. She advised me that she
18 does not use GroupMe. She has no longer the -- I think it
19 was a Galaxy 9 as she described it, at the time, but there
20 were no text messages to her knowledge. She did advise me
21 that and she couldn't -- when I asked her whether or not
22 with transport whether she would log anything in, she said
23 if I did text it would -- because I'm the wagon transport,
24 it would probably only have been wagon transport time or the
25 location of the transport, but she was unable to provide me

[REDACTED]

1 with any records of the same.

2 There was another officer on scene that -- that
3 responded to the scene who controlled or was responsible for
4 blocking off the top of the [REDACTED] the morning
5 of -- the aftermath of the shooting, that is [REDACTED]
6 [REDACTED] Myself, [REDACTED] we made multiple
7 attempts to try to get in touch with her. The mailbox is
8 full. I've left repeated messages. [REDACTED] does work
9 Charlie shift today, Your Honor, from 3:00 p.m. to 11:00
10 p.m., but I still. I pulled [REDACTED] body-worn
11 camera. I didn't see anything that would be indicative of
12 the fact that there would be text messaging of [REDACTED]
13 but again, I haven't been able to verify that without
14 speaking with her.

15 Then there's [REDACTED] I
16 directed [REDACTED] in an attempt to get in
17 touch with him. We've been unsuccessful in doing so. The
18 messages -- unfortunately, he's not picking up the phone or
19 answering the phone. I did inquire with the [REDACTED]
20 [REDACTED] who is the Lieutenant out of the Northern District
21 early this morning as to [REDACTED] whereabouts,
22 if he's still technically assigned to the Northern, or where
23 he is assigned. I was advised, and [REDACTED] followed
24 up, that he's with the RMS Section of the department, which
25 it's my understanding deals with reports, and may

[REDACTED]

1 potentially work the midnight shift. But as of today, Your
2 Honor, I have not made -- been able to nor any of the
3 detectives been able to make contact with [REDACTED]
4 [REDACTED] Per my review and I reviewed his body-worn
5 camera now on multiple occasions, at a point in time there
6 is a photograph that he takes with a departmental phone or a
7 cell phone -- I can't tell whether it was departmental or
8 not, of the location of what is ultimately recovered by
9 [REDACTED] to be a firearm in question related to this
10 investigation. So that is something that the State is still
11 seeking to obtain.

12 There were a number of other officers on the body-
13 worn cameras. These were the body-worn cameras from the [REDACTED]
14 [REDACTED] search and seizure warrant execution. All of the
15 members, [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 [REDACTED]
24 [REDACTED] were identified as Baltimore
25 City officers that actually are involved in or assigned to

[REDACTED]

1 squad. They participate in Raid Team. All these -- the
2 sequence numbers were provided to [REDACTED] We are
3 trying to send out a mass e-mail to determine whether or not
4 any of them have any cell phone -- retrievable cell phone
5 messages from that day. The response I received was no. I
6 also received word that with SWAT, I guess, protocol with
7 the initial entry that no one's actually on the phone
8 because of the -- I guess, the intense focus of going into a
9 house. So I had not received anything to the contrary that
10 any officers have advised myself or detectives that they
11 have messages pertinent to this that are still retrievable.

12 THE COURT: Okay. I want to thank you for all of
13 the information that you provided. Was there access to the
14 IID records of [REDACTED] (sic) also made?

15 [REDACTED] And I'll defer to [REDACTED] at
16 this time, Your Honor.

17 THE COURT: All right.

18 [REDACTED] I did have a conversation with [REDACTED]
19 [REDACTED] at conclusion of the hearing on Friday --

20 THE COURT: Uh-huh.

21 [REDACTED] -- advising of the Court's
22 instruction.

23 THE COURT: Uh-huh. Right. I just didn't know
24 whether there was any additional information, other than
25 what we already know, was the trial before [REDACTED] that

[REDACTED]

1 resulted in a guilty finding.

2 [REDACTED] Your Honor, based on the -- your
3 request, I contacted our BPD legal liaison with IID -

4 THE COURT: Uh-huh.

5 [REDACTED] -- and requested -- made the
6 request that any and all files that are in the disciplinary
7 history of [REDACTED] be provided to the PIU Unit at
8 the State's Attorney's Office --

9 THE COURT: For an in camera review?

10 [REDACTED] Not for an in camera review but to
11 pass on directly to Defense counsel.

12 THE COURT: Okay. Well, I think you
13 misunderstood. I wasn't necessary going to pass everything
14 on, but certainly would want to know if there was anything
15 in there in addition to the conviction.

16 [REDACTED] Certainly --

17 THE COURT: By the way, I think that the
18 conviction, Ms. Levi, would be probably the best thing that
19 you -- tool you would have in the event that you needed to
20 call him or you wish to call him. You would have that -- I
21 don't think you can get any better than a conviction for
22 perjury or malfeasance where the facts underlying that case
23 mirror the finding of a gun in this case. So -- but I --
24 I'd -- I'm just throwing that out there. But --

25 [REDACTED] Certainly, Your Honor. Since the
[REDACTED]

1 disclosure had --

2 THE COURT: Uh-huh.

3 [REDACTED] -- disclosure had been made on any
4 other officers -

5 THE COURT: Yes.

6 [REDACTED] -- in this case, I believe we had
7 over 30 officers --

8 THE COURT: You did.

9 [REDACTED] -- were I requested the --

10 THE COURT: Uh-huh.

11 [REDACTED] -- the -- their entire disciplinary
12 records, which then was made available for inspection
13 pursuant to the --

14 THE COURT: Being consistent.

15 [REDACTED] -- being -- yes, and pursuant to
16 the policy of --

17 THE COURT: Uh-huh.

18 [REDACTED] -- the State's Attorney's Office.
19 So I requested any and all files at 4:46 p.m. on Friday --

20 THE COURT: They're putting it together?

21 [REDACTED] Our liaison, unfortunately,
22 informed me that because I informed her at 4:46 it was
23 highly unlikely that we could get all at -- by 10 o'clock on
24 Monday morning. However, I forwarded that request also to

25 [REDACTED] -

[REDACTED]

1 THE COURT: Uh-huh.

2 [REDACTED] -- who is the officer in charge of
3 IID and who has helped us in similar situations to expedite
4 the situation. I did not hear back from her and based on
5 the lack of turnaround --

6 THE COURT: It's a short amount of time. Yeah.

7 [REDACTED] It is a short amount of time.
8 However, we had a number of files in our actual possession
9 from previous disclosures. We forwarded those files to
10 Defense counsel at 5:21 via Hightail --

11 THE COURT: On Friday?

12 [REDACTED] -- on Friday. As it turns out,
13 most of these files were actually expunged.

14 THE COURT: Okay.

15 [REDACTED] They no longer appear in the
16 Office's current summary, but we did provide --

17 THE COURT: You still sent them forward? Uh-huh.

18 [REDACTED] -- we still provided them. IID --
19 uploaded one minor casebook after hours on Friday which gave
20 me high hopes that we would receive more over the weekend.
21 Our paralegal was in on Saturday, found -- retrieved that
22 file and forwarded it to Defense at 3:21 p.m. I came in on
23 Sunday at 11:15 a.m. and found that no other files had been
24 uploaded. I sent another e-mail to just express the urgency
25 to have any and all IID records independent of outcome, if

[REDACTED]

1 they're closed, if they're open, if they're sustained, if
2 they're not sustained, be provided to us. This morning at
3 about 8:30 I received a communication from our liaison who
4 assured me that, while they're one person short at IID, she
5 and one other BPD member are working and pulling our request
6 together. I requested three additional files that were --
7 that I found out about by studying the latest summary of the
8 officer, so I am optimistic that we will have the officers'
9 entire records either for your review, Your Honor, or to be
10 provided to Counsel directly, hopefully today.

11 THE COURT: Thank you, Counsel. I appreciate --

12 [REDACTED] Thank you.

13 THE COURT: -- the yeoman's effort by both
14 representatives from the State's Attorney's Office.

15 [REDACTED] Thank you.

16 THE COURT: I did and was fully aware of the
17 lateness of the hour. In fact, I remarked about the fact
18 that it was like 4 o'clock, 4:15 when we were concluding and
19 I wasn't sure much success you might have which is why I
20 said instead of 9:30, let's try 10:30, which may have given
21 you a little bit more wiggle time in order to see what could
22 be located. But thank you very much.

23 [REDACTED] Thank you, Your Honor.

24 THE COURT: Now, Ms. Levi --

25 MS. LEVI: Thank you, Your Honor.

[REDACTED]

1 THE COURT: You now have -- it sounds to me about
2 85 percent. You're still missing a few things. [REDACTED]
3 is still working on getting a few items and, you know, based
4 on our conversations on Friday, I know what you want. You
5 want a dismissal and I understand why you want it and you've
6 made a record of that. Assuming that I don't agree and a
7 dismissal is a sanction that the Court is not willing to go
8 to, would you be -- are you able to proceed with what you
9 have or do you feel as though you will not be able to
10 adequately represent [REDACTED] at this time?

11 MS. LEVI: I'd like to answer that question as
12 long as I can reserve just a few minutes to build the rest
13 of the record in response to the production. But --

14 THE COURT: Okay.

15 MS. LEVI: -- may I have --

16 THE COURT: Oh, I'm sorry.

17 MS. LEVI: -- a few minutes to do that? Yes.

18 THE COURT: Is there some other --

19 MS. LEVI: Yes.

20 THE COURT: -- information that you still feel
21 that you don't --

22 MS. LEVI: Yes.

23 THE COURT: -- have?

24 MS. LEVI: May I please proceed briefly on that?

25 THE COURT: Oh, absolutely.

[REDACTED]

1 MS. LEVI: Thanks so much.

2 THE COURT: I apologize. I thought we covered
3 everything on Friday. In fact, let the record reflect that
4 I think you did most of the talking on Friday.

5 MS. LEVI: A lot of talking.

6 THE COURT: Ms. -- yeah, well, no, the Court was
7 giving you the time so that you could adequately provide as
8 much detail and as you went along, [REDACTED] had maybe 30
9 minutes left, but to the extent that he was able to see that
10 some of the things that I had listed, which was a summary of
11 your list, had not been disclosed, it made more sense to
12 finish at 4:15 and allow him to get to work on it, which he
13 obviously has done. And you know, I know it was a short
14 amount of time, so I fully recognize that you made a great
15 effort there, but you think there's more?

16 MS. LEVI: I do, Your Honor, and I appreciate --

17 THE COURT: Let the record reflect that you have
18 turned on the screen.

19 MS. LEVI: Yes.

20 THE COURT: Is this one of the exhibits?

21 MS. LEVI: It actually -- I can add it to the
22 flash drive. I didn't want to bring another flash drive.

23 THE COURT: Don't add -- well --

24 MS. LEVI: I can bring another flash drive, but --

25 THE COURT: Please.

[REDACTED]

1 MS. LEVI: Actually, this is on Exhibit 1 -- it is
2 on the --

3 THE COURT: A.

4 MS. LEVI: -- flash drive already. No, this is
5 Mr. -- [REDACTED]'s --

6 THE COURT: No, no, no, on the --

7 MS. LEVI: -- body camera.

8 THE COURT: -- the disk --

9 MS. LEVI: It is on 1. It is -- this on 1.

10 THE COURT: That's what I mean. So it is already
11 in evidence and marked --

12 MS. LEVI: Yes.

13 THE COURT: -- as Defense Exhibit 1A?

14 MS. LEVI: This is. There's a separate document
15 that I have prepared for today that is not yet in evidence,
16 but I can print it out --

17 THE COURT: Okay.

18 MS. LEVI: -- and show it to you.

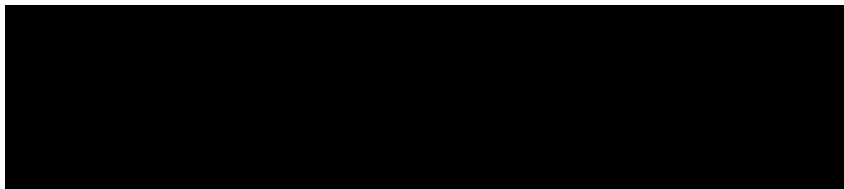
19 THE COURT: So let us record for us, this is
20 9/28/2018 21 -- no 1:21 --

21 MS. LEVI: 27Z time. And this is --

22 THE COURT: 27Z time.

23 MS. LEVI: -- the body --

24 THE COURT: -- 27Z time and it looks like body
25 camera 2XB as in boy 1022095, and that will appear on



1 Defense Exhibit 1A, and you are now --

2 MS. LEVI: It is actually I think 1AA, I have to
3 look, it's --

4 THE COURT: The first exhibit had a whole bunch of
5 things.

6 MS. LEVI: That's correct. And this is [REDACTED]
7 [REDACTED]'s body-worn camera and my co-Counsel was looking
8 to see which is 1A -- I think it's C --

9 THE COURT: It's not 1A, it's 1C?

10 MS. LEVI: I'm sorry, 1C, and it's titled _51 --
11 it's saved on the flash drive as we received it from the
12 State's Attorney's Office -- [REDACTED] with
13 ending in eau, because there's one on there that only ends
14 in ea, [REDACTED] And this is [REDACTED] --

15 THE COURT: [REDACTED] -

16 MS. LEVI: -- [REDACTED] And this is the
17 officer who we were told was the only recovering -- we were
18 never told again about [REDACTED], so this is what
19 we had asked for in motion to compel, and I just want to
20 play for the Court --

21 THE COURT: This is the one where you said that
22 you believed at the time that the gun was found that [REDACTED]
23 [REDACTED] was a block away?

24 MS. LEVI: He is a block away, yes. And so I'm
25 going to -

[REDACTED]

1 THE COURT: And this is the body-worn camera of

2 [REDACTED] --

3 MS. LEVI: Yes.

4 THE COURT: -- at the time that you believe that
5 the gun was recovered?

6 MS. LEVI: That's correct.

7 THE COURT: All right.

8 MS. LEVI: I'm going to turn the -- let's see if
9 there's volume.

10 (Playing video.)

11 MS. LEVI: So this -- what it is showing there and
12 I would just proffer to the Court is one block parallel to
13 [REDACTED] Pardon? [REDACTED] Here's [REDACTED] at the top.
14 So you can see [REDACTED] is going to be to his left. And
15 he's turning up the alley that now connects him to the alley
16 behind [REDACTED] where the weapon was recovered or located.
17 And the let -- I would let the record reflect the silence is
18 what you hear is some clicking appears to be on his phone,
19 texting.

20 THE COURT: Yeah, I hear the chirping being the --
21 there's sound.

22 MS. LEVI: And he's stopped, not moving, which is
23 unusual. And I'm proffering to the Court that as you'll
24 see, he's on his phone, when he's doing his texting on his
25 phone right now, immediately prior to the gun. Did you see

[REDACTED]

1 that, Your Honor? Did you see the phone?

2 THE COURT: I see he's texting, yes.

3 MS. LEVI: Did you see the phone come up on the
4 screen?

5 THE COURT: Yes.

6 MS. LEVI: Okay. And then --

7 THE COURT: Did I see the what come up on the
8 screen?

9 MS. LEVI: The phone. There was a clear shot of
10 his phone --

11 THE COURT: Oh yeah, yeah, yeah, yeah, yeah.

12 MS. LEVI: -- and a texting application?

13 THE COURT: Yeah, yeah, yeah. Yeah. Yeah. Yes.
14 Yes.

15 MS. LEVI: And then when he goes around the corner
16 -- so this is where we found it all, watching all the body
17 cameras. So the response from the State is well, I asked
18 these officers and they said they didn't have it and [REDACTED]
19 [REDACTED] wasn't texting. When he goes around the corner to see
20 [REDACTED] he clearly has his phone out also taking
21 photographs of the recovery of the weapon. Now, I can play
22 that forward if you'd like, Your Honor, just so you can see
23 all of these sort of periphery officers are one thing, but
24 these two particular officers text messaging each other
25 directly before the recovery -

[REDACTED]

1 THE COURT: Well, wait a minute. We don't know
2 that he's text messaging [REDACTED] We know he's text
3 messaging someone, but I couldn't see who he was text
4 messaging.

5 MS. LEVI: Right. The inference for us when
6 [REDACTED] also has his phone out when he gets there is
7 concerning. And what we still don't have and I --

8 THE COURT: Well, wait. Slow down, Ms. Levi.

9 MS. LEVI: Okay.

10 THE COURT: You cannot say on the record that --

11 MS. LEVI: You're right.

12 THE COURT: -- [REDACTED] is text messaging
13 Sullivan (sic). He has his phone out. He's text messaging
14 somebody.

15 MS. LEVI: Right, and [REDACTED] --

16 THE COURT: Okay.

17 MS. LEVI: -- when we go around the corner will
18 also have his phone out. So those are the ones I'm most
19 concerned about. I -- the State says they can't find
20 [REDACTED] As we know, he was in court all last
21 week. We have him under subpoena. We've spoken with his
22 defense lawyer who says at the ready that you need him, we
23 will have him there for you. I don't know that the State's
24 gone to any similar effort, but certainly we all knew where
25 he was to put him under subpoena last week and -

[REDACTED]

1 THE COURT: But that --

2 MS. LEVI: Yeah, I'm just --

3 THE COURT: That -- the production of [REDACTED]
4 [REDACTED] was made part of the record on Friday when it was
5 discovered that he found the gun but didn't recover the gun,
6 according to the State.

7 MS. LEVI: That wasn't Friday--

8 THE COURT: That's what the testimony was that he
9 was there, he said he needed gloves and that [REDACTED]
10 came and recovered it. That's what the State said. You
11 said, well, Judge, [REDACTED] was a block away when the
12 gun was recovered.

13 MS. LEVI: Yes.

14 THE COURT: So now, you're showing the body-worn
15 camera footage of [REDACTED] which shows, as I believe
16 you're fast-forwarding, the recovery of the gun, but you're
17 also showing me that during the recovery, there was a phone
18 out where he was text messaging, and we do not have the
19 content of that message --

20 MS. LEVI: Yes, I heard that Officer --

21 THE COURT: -- that we know.

22 MS. LEVI: Right.

23 THE COURT: We don't know if that -- what's being
24 text messaged or what is going on is part of that GroupMe
25 message group. We don't know if he's part of that.

[REDACTED]

1 MS. LEVI: Right.

2 THE COURT: If he's one of the receivers of the
3 information. We don't know if he is responding or sending
4 out any information as a result of participating in that --

5 MS. LEVI: Sure.

6 THE COURT: -- and as Counsel indicated, he does
7 not know whether GroupMe has a means by which --

8 MS. LEVI: I'm listening.

9 THE COURT: -- there is a record of all these
10 prior text messages from whomever. I would note for the
11 record that as members joined the GroupMe, they are
12 identified. It seems on page 8. It could the State's when
13 [REDACTED] was added.

14 MS. LEVI: Right.

15 THE COURT: [REDACTED] was added to the group.
16 So it could be, and we don't know, that there is some way of
17 subpoenaing those records and finding out exactly who said
18 what to whom and when --

19 MS. LEVI: Yes.

20 THE COURT: -- which would be inclusive of
21 everyone on the group at the time. You're showing me this
22 to say?

23 MS. LEVI: What -- then it goes on to say -- this
24 is a separate one I'm going to get to in one second. But
25 what the State's response is, I asked and there were none,
[REDACTED]

1 and our concern is not only does [REDACTED] stop and have
2 these text messages and I -- all [REDACTED] said was, I
3 don't have any, that's the State's proffer today based on
4 what [REDACTED] told the State, and with all respect to
5 [REDACTED] for us, that's not acceptable because when you
6 turn the corner [REDACTED] has his phone out and he
7 says to himself while he's recording on body camera, I'm
8 going to now take pictures. So he's clearly referencing
9 that he's capturing images related to this recovery. So I'm
10 -- I would tell the Court, and the State if -- what the
11 State said to me prior to the hearing is well, we haven't
12 been able to find him or get in touch with [REDACTED]
13 So at the conclusion of this hearing, I'm happy to give the
14 State the defense lawyer's contact information. [REDACTED]
15 [REDACTED] is under subpoena for this case and they have
16 been willing to cooperate with us, so the State can make an
17 inquiry for that information.

18 What the State also just proffered, was that Scott
19 West was part of the Raid Team and unable to be contacted
20 via cell phone. And what I'm showing to the Court, and I do
21 apologize, I neglected to put this on the flash drive, but
22 will before I leave the courtroom, is [REDACTED]
23 body-worn camera during the raid. And as you can see in the
24 screen, this is [REDACTED] on her cell phone, which is
25 again what alerted us to this existence. So what we're -

[REDACTED]

1 THE COURT: What a minute, slow down, slow down.
2 [REDACTED]'s body-worn camera during the raid depicting
3 what that you believe it shows?

4 MS. LEVI: I can see, when I see it, that the
5 individual she's texting is [REDACTED], and the context that
6 I catch this in is that she's texting related to the raid.
7 So if I can just hit play.

8 THE COURT: Okay. So you're saying that this is
9 the information --

10 MS. LEVI: This --

11 THE COURT: -- that again could -- and you
12 believe, based on what you're able to see that that's part
13 of that GroupMe?

14 MS. LEVI: No, this is not --

15 THE COURT: Because of the app --

16 MS. LEVI: This is not GroupMe. This is actually
17 just straight text messaging so it's different than GroupMe.
18 And let me just back up very, very quickly.

19 THE COURT: How do you know it's not Group -- a
20 GroupMe?

21 MS. LEVI: Okay. Hold on one second. If I --
22 well, that's the -- GroupMe doesn't look like that and
23 that's just the face of the regular iPhone text messaging
24 application.

25 THE COURT: Okay. So you say GroupMe doesn't look
[REDACTED]

1 like that, you mean 'cause it has a -- does it have a red --

2 MS. LEVI: Because it has the contact, it has the
3 -- this is the -- in the top of the screen, which you can't
4 see that as clearly from here -- is [REDACTED]. His
5 contact information as an iPhone contact. This appears to
6 be an iPhone. There's a messaging app. The phone app and
7 then she -- you'll get a better view of this --

8 THE COURT: As if she had him in her contacts?

9 MS. LEVI: That's right.

10 THE COURT: And was just sending a --

11 MS. LEVI: Text messaging to him.

12 THE COURT: -- e-mail -- text message.

13 MS. LEVI: And I will say that while the State
14 appears to have done a Herculean effort this weekend, I
15 first sent an e-mail to the State, well, I'm sure that I
16 mentioned it in conversation, but when I didn't get
17 production, I sent an e-mail to the State and I looked over
18 it for them over the weekend in August, also, and I just
19 would read this into the record, please.

20 THE COURT: Ms. Levi

21 MS. LEVI: I know, but I just want to make the
22 record.

23 THE COURT: Ms. Levi. Ms. Levi, you made a
24 record. The reason why this Court --

25 MS. LEVI: Yes.

[REDACTED]

1 THE COURT: -- instructed [REDACTED] to reach out
2 to all those officers is because that was one of the things
3 that you said --

4 MS. LEVI: Right.

5 THE COURT: -- all -- on review of the body
6 camera, it would appear that numerous officers were text
7 messaging.

8 MS. LEVI: Right.

9 THE COURT: You said that.

10 MS. LEVI: Right.

11 THE COURT: And you said you did not receive any
12 of that information and it appeared that they were using
13 something other than --

14 MS. LEVI: Right.

15 THE COURT: -- standard-issue Baltimore --

16 MS. LEVI: Right.

17 THE COURT: -- City Police Department equipment,
18 and you said, and it was during the course of their
19 operations that they were using these phones.

20 MS. LEVI: Right.

21 THE COURT: So you have made a record of this.

22 MS. LEVI: But the State just came forward and
23 said, well, we checked with [REDACTED] and this is all
24 she had and she said there are no more, and [REDACTED] says
25 he does not text during the raid. So I just want to proffer

[REDACTED]

1 that there's evidence otherwise to the contrary during the
2 raid. [REDACTED] right here and if I can --

3 THE COURT: Well, whether it's to the contrary or
4 not, you believe that there's other evidence?

5 MS. LEVI: Yes.

6 THE COURT: Whether it's to the contrary is for
7 production of evidence at a trial where the trier of facts
8 decides if it's contrary. What you want is all of the
9 evidence. You want all of the documents. You want all of
10 the evidence that might be reasonably generated as a result
11 of what you're seeing on the body-worn camera.

12 MS. LEVI: Yes.

13 THE COURT: Okay.

14 MS. LEVI: May I just finish playing this brief
15 clip, Your Honor?

16 THE COURT: Yes.

17 MS. LEVI: Okay.

18 THE COURT: You may. And let the record reflect
19 this is body-worn camera X as in x-ray, [REDACTED]

20 [REDACTED] as in [REDACTED] And this is of [REDACTED]

21 [REDACTED]

22 MS. LEVI: Texting with the Raid Team, [REDACTED]
23 until she realizes it's being picked up on the body camera
24 and then makes an effort to conceal it.

25 THE COURT: Well -

[REDACTED]

1 MS. LEVI: Okay. And then --

2 THE COURT: -- she doesn't make an effort to
3 conceal it. That's your interpretation of it. She raises
4 it up so that her body-worn camera is not view of what's
5 going on in front of her is not blocked.

6 MS. LEVI: Having not anticipated the State would
7 come back today and say I asked them all and they said they
8 didn't have any, I tell you as an officer of the court,
9 there's another point where she says, I was just texting him
10 but I lifted it out because of this, and she points to her
11 body camera. So I'm saying that as an officer of the court
12 --

13 THE COURT: What's the purpose -- wait, one
14 second, Ms. Levi.

15 MS. LEVI: Yes. What's the purpose? Let me just
16 --

17 THE COURT: Ms. Levi, I understand you're making
18 an argument, but listen to what I'm saying for a moment.
19 When an officer is on the street --

20 MS. LEVI: Uh-huh.

21 THE COURT: -- what's the purpose of the body-worn
22 camera other than when there are residents or citizens
23 present? Why would an officer turn on a body-worn camera as
24 they were entering an alley --

25 MS. LEVI: To look -

1 THE COURT: -- at night?

2 MS. LEVI: They're looking for something. They're
3 documenting, looking for something.

4 THE COURT: Really? That's the only reason?

5 MS. LEVI: Well, that camera was while they're --

6 THE COURT: That's not what I'm asking you. I'm
7 asking you, as a seasoned attorney, can you see any other
8 reason why an officer entering an alley at night alone might
9 turn on their body-worn camera?

10 MS. LEVI: For safety.

11 THE COURT: Because there was clearly no gun --

12 MS. LEVI: For safety.

13 THE COURT: -- visible in the alley.

14 MS. LEVI: Sure, for their own safety, to protect
15 their own safety.

16 THE COURT: How do they protect themselves?

17 MS. LEVI: Well, they're -- I mean, I --

18 THE COURT: How does the camera protect
19 themselves?

20 MS. LEVI: Well, I guess, I don't know -- the
21 policy is for transparency and to record events as they're
22 happening, you know, for criminal investigations. So the
23 policy says at the beginning of an investigation, at the end
24 of an investigation, and in fact when there are citizens
25 who's privacy would be invaded, they're supposed to -- if

1 like for example, somebody's being unclothed, or there's
2 somebody innocent that they turn it off briefly, but other
3 than that, I don't -- I'm just looking in my mind as to what
4 the policy says.

5 THE COURT: You can't think of anything else?

6 MS. LEVI: For -- to document the investigation
7 from start to finish.

8 THE COURT: How about if you're entering an alley
9 by yourself where you can't really see everything --

10 MS. LEVI: Well, that's --

11 THE COURT: -- that you make sure that the camera
12 is visible in the event, God forbid, someone attacks you or
13 shoots at you, that if you're not there to speak for
14 yourself that perhaps the body-worn camera will capture
15 where the shot came from, who may have been the shooter, and
16 thereby protect the officer, or if not protect them, assist
17 in determining whether or not the culprit, the perpetrator
18 could be identified. So if you're standing somewhere where
19 your lights are on --

20 MS. LEVI: Yes, Your Honor. I'm listening. If
21 you're -- I'm just looking for something while I'm talking
22 to you. If you're standing where your lights are on, I'm
23 listening.

24 THE COURT: You know, if I did not give you your -
25 - my undivided opinion when you were talking to me, you

1 would be very upset if I said, oh no, go ahead Judge -- Ms.
2 Levi, keep -- go ahead and keep talking while I look through
3 these -- my file. You would have a problem with that and
4 well, you should, because I should give you my undivided
5 attention. The only time I do this is to literally type
6 what you're saying. That's how I made my lists when you
7 were talking. I was taking notes, but I was paying
8 attention to you. I was giving you that courtesy and
9 respect. I didn't say --

10 MS. LEVI: I apologize, Your Honor.

11 THE COURT: -- hey, what you're saying, Judge, is
12 not that important so I can listen to what you're saying and
13 I can also do something else, too, because what I'm doing is
14 more important than what you're saying.

15 MS. LEVI: No, I was listening --

16 THE COURT: And I'm making the ruling on what
17 you're asking me to do, and I think that being fair and
18 reasonable --

19 MS. LEVI: I agree.

20 THE COURT: -- and polite and courteous that you
21 ought to give me my -- now, I'm going to stop, let you
22 finish working on your computer. When you get whatever you
23 want set up and you're willing and able to listen to me, you
24 let me know. Okay?

25 MS. LEVI: Okay. It's ready.

1 THE COURT: All right. What I was saying to you
2 is I'm not the trier of the facts. We are pretrial, in a
3 sense. You have yet to even elect whether you want a jury
4 trial or a court trial. We are still in a place where I
5 have agreed with you that there is evidence that you ought
6 to have. And my request on Friday, at the 11th hour, was to
7 try to go through the list of things that you asked for and
8 make sure you got everything.

9 MS. LEVI: Okay.

10 THE COURT: [REDACTED] has conceded that he was
11 not able to get everything, which is why he went through his
12 list, and my statement that I thought he had done a yeoman's
13 job was to say that of the 30 detectives and officers,
14 patrol officers and the like, he had gone through and got
15 quite a bit of information, but in that short notice had to
16 rely on what the officers were saying because logistically,
17 there was no way to go around and get the phones of all 30
18 people and get all that information and have it here by
19 10:30 this morning. He's telling us what he does not have
20 and you're showing me this last exhibit, which you're going
21 to mark and put into evidence of the body-worn camera of
22 Sergeant Street, showing texting between her and [REDACTED] --
23 [REDACTED] is yet another thing that, from the [REDACTED]
24 side, he does not have. From the [REDACTED] he's only
25 give -- able to give you in a limited portion, which I

[REDACTED]

1 believe he identified started at page 8 onto page 9. And
2 the phone that's referenced in this exhibit may or may not
3 be the phone that we see on the body-worn camera because you
4 have pointed out that you believe that what we're looking at
5 is not a GroupMe text, but rather an individual text between
6 [REDACTED] correct?

7 MS. LEVI: Yes.

8 THE COURT: And for that reason you think that
9 there's still information out there that you have yet to
10 receive?

11 MS. LEVI: That's right.

12 THE COURT: And I believe [REDACTED] is conceding
13 that he was unable to get information from [REDACTED] So is
14 there anything else that you believe, other than what he's
15 conceded, that he does not have and has been unable to
16 locate? We now know that there are records that you just --
17 I don't know what -- if you've had a chance to look at the
18 ones that came on [REDACTED] --

19 MS. LEVI: Friday.

20 THE COURT: On Friday night 5- -- whatever
21 o'clock. You also now have the conviction which you didn't
22 have before but you do have a certified copy.

23 MS. LEVI: Yes.

24 THE COURT: And you also have [REDACTED]
25 under subpoena.

[REDACTED]

1 MS. LEVI: Yes.

2 THE COURT: And you've spoken to his counsel?

3 MS. LEVI: Yes.

4 THE COURT: Okay. Is there anything else?

5 MS. LEVI: Well, my only concern was that I --
6 maybe -- and I misunderstood it. I guess I took issue with
7 it and I misinterpreted whether the Court was just satisfied
8 with the response that they said they didn't have any, and
9 so when I said to the contrary what we have through the
10 body-worn cameras evidence, but wait on that day, [REDACTED]
11 [REDACTED] just presented to the Court, well [REDACTED] says
12 pursuant procedures during the raid they don't --

13 THE COURT: He doesn't have it at this time.

14 MS. LEVI: Well, I didn't -- and I didn't --
15 that's the part that I didn't hear was at this time.

16 THE COURT: Well, I took it to mean --

17 MS. LEVI: Okay.

18 THE COURT: -- in the short amount of time from
19 4:00, 4:15 on Friday --

20 MS. LEVI: Right.

21 THE COURT: -- 'til 10:30 today, this is what he's
22 been able to gather.

23 MS. LEVI: Right.

24 THE COURT: He's conceded there's other stuff that
25 he does not have, may not have -

[REDACTED]

1 MS. LEVI: Right.

2 THE COURT: -- and in fact, does not know if we
3 could get --

4 MS. LEVI: Right.

5 THE COURT: -- because we haven't had an
6 opportunity to subpoena records from GroupMe.

7 MS. LEVI: Right.

8 THE COURT: And he conceded that for all we know,
9 until a subpoena goes out to GroupMe, we don't know whether
10 or not these exist -- these records are in fact in existence
11 somewhere --

12 MS. LEVI: Right.

13 THE COURT: -- in some form --

14 MS. LEVI: Right.

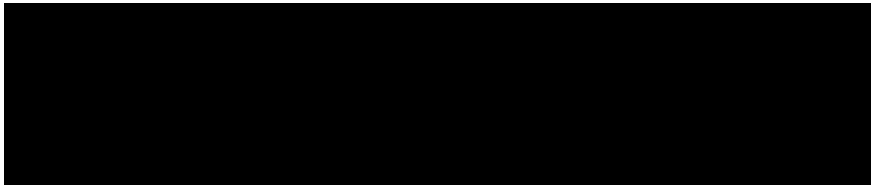
15 THE COURT: -- where you can get them, but, you
16 know, I'm not [REDACTED]'s attorney and I -- you know how
17 this information may or may not factor into your defense.
18 My question is, it would appear from the Court that until we
19 get all that information, you're not ready to go to trial.

20 MS. LEVI: Yes. And I -- yes, 100 percent, and I
21 was just concerned that that was going to be the end of it,
22 that we weren't going to be able to get more.

23 THE COURT: Ms. Levi --

24 MS. LEVI: So yes.

25 THE COURT: Ms. Levi, I'm not -- I -- on this



1 information --

2 MS. LEVI: Yeah.

3 THE COURT: -- I'm not on the State's side in
4 this. I hope that hasn't been clear enough. [REDACTED]
5 doesn't think I'm on their side on this, which is why I gave
6 him the marching orders. And oh, by the way, I thought I
7 was very clear that I was very upset about the amount of
8 information that they don't have. And, oh, by the way, this
9 Exhibit No. 3, which is only, I think the top of the
10 iceberg, contains very detailed information about the crime
11 scene, which I believe, in order for you to be prepared, you
12 need to have --

13 MS. LEVI: Yes.

14 THE COURT: -- because the only other thing we
15 have about the crime scene is the video.

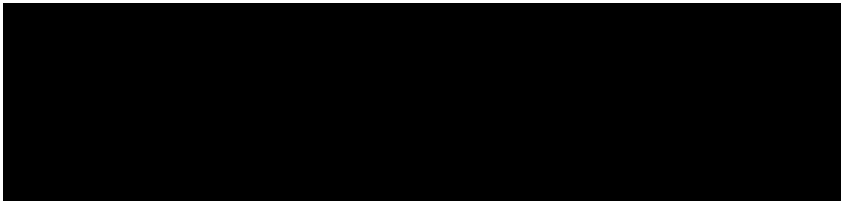
16 MS. LEVI: Right. And so maybe then just I would
17 phrase it differently as a matter of courtesy to the State.
18 I went and grabbed a few screen grabs that show -- like text
19 messaging, and I can give that to [REDACTED] later or I
20 could just briefly -- I only have two more or three more
21 screen grabs where I could show them texting and what
22 appeared to be about the case. For efficiency's sake, I
23 wanted to point that to [REDACTED]'s attention.

24 THE COURT: I think there needs to be a subpoena
25 to GroupMe.

[REDACTED]

1 MS. LEVI: Well, the other --

2 THE COURT: And I also think that the State needs
3 to seriously consider identifying each and every cell phone
4 that Ms. Levi has pointed out where there is something other
5 than GroupMe text information going back and forth. I'm
6 concerned about the content of those text messages as it
7 relates to this case. This case is all about this video at
8 the scene, and I don't know which one it is, but there is a
9 body-worn camera where someone comes out of one of those
10 yards and is permitted to leave, and we need to follow up on
11 whether or not there was any text messaging related to that.
12 I mean, that -- I liken it to looking at a picture through a
13 tunnel where you're only able to see the limited aspects of
14 the tunnel and within your sight you are able to say, oh, I
15 know what that's a picture of, only to go out of the tunnel
16 and see the entire picture and realize it's not what you
17 thought it was. And I believe that the State has created a
18 bit of a tunnel vision as it relates to this case. The
19 Defense has the right to all of the evidence, though it may
20 not create the same picture that the State would like it to
21 create. The Defense has a right to have everything. And if
22 when they change the puzzle around the pieces fit to produce
23 a different picture of the evidence in this case, then and
24 only then can Ms. Levi adequately produce or have an adequate
25 defense, because for all we know, you give her everything



1 and it's the same picture. On the other hand, you give her
2 everything, and she takes the pieces and moves them around
3 and it shows a totally different picture consistent with her
4 client's innocence. But that decision can't be the State's.
5 The decision has got to be -- I'm handing it over 'cause the
6 rules say I have to. I'm handing it over and I am going on
7 a search to get everything I'm supposed to pursuant to the
8 Rules and hand it over and let her do with it with what she
9 may. And oh, by the way, by the way, [REDACTED], in the
10 process of gathering this information, you need to have it
11 as well. You need to know whether your officers had
12 something else out there that they're not telling you. You
13 need to know whether there was some conversation. You need
14 to know and consistent with the fact that we now know that
15 [REDACTED] (sic) is found guilty of perjury and
16 malfeasance in office as it relates to a firearm and there
17 was a firearm found in this case which he did not,
18 interestingly, recover but someone else did, you need to
19 know when, the timing, how that fits, you need to know that
20 because that is part of your case. Whether you choose to
21 call [REDACTED] that's up
22 to you, but you need to have that information and you need
23 to explore it in your determining how to present your case.
24 And I'm concerned. That's just one piece. There are lots
25 of others. I know you said you're not going to introduce
[REDACTED]

1 the gun; I understand that. But maybe the State wants to
2 talk about it -- I mean, the Defense wants to talk about it.
3 Maybe she wants to call [REDACTED] about the gun and where
4 it was found and who might have been nearby, or whether or
5 not somebody was walking through that yard. Maybe she wants
6 to create an alternative theory of this case. That's her
7 right. You got to let her do it.

8 So I'll ask you that last question again; are you
9 ready for trial?

10 MS. LEVI: No, Your Honor.

11 THE COURT: I can see that.

12 MS. LEVI: The statements that we went over over
13 the weekend, the two civilian witnesses that had -- and I
14 spoke with [REDACTED] about this 'cause it had -- fair to
15 say [REDACTED] had been in his possession and then were
16 somehow overlooked, but they do give us additional
17 information about who may have handled the weapon. A
18 totally different individual who may have handled the weapon
19 --

20 THE COURT: Wait, wait, wait, wait. The witnesses
21 who are looking out of their window who identified the
22 Defendant at the scene of the shooting.

23 MS. LEVI: They don't look out the window, but who
24 hear --

25 THE COURT: Oh, wherever -

[REDACTED]

1 MS. LEVI: Who hear, uh-huh.

2 THE COURT: Who hear the shooting --

3 MS. LEVI: Uh-huh. Right. So they're --

4 THE COURT: -- are also talking about seeing
5 someone in close proximity to where the gun was found?

6 MS. LEVI: So they're all related to --

7 THE COURT: I'd asked you -- I asked you a
8 specific question. Are you telling me, based on what you
9 said a moment ago, that the witnesses' statement talk about
10 some other person who may have been in close proximity to
11 where the gun was found; is that what you're saying?

12 MS. LEVI: They identify a fourth individual who
13 may have placed the gun where it was located; does that make
14 sense? Totally unrelated to the person who was outside at
15 the time of the shooting.

16 THE COURT: Personal knowledge of that?

17 MS. LEVI: There all taking about hearsay in the
18 neighborhood, but the hearsay in the neighborhood --

19 THE COURT: May lead you to some information?

20 MS. LEVI: Right, or may also be used as
21 impeachment 'cause their hearsay could sum -- arguably be a
22 source of so up in the night. But in any event --

23 THE COURT: Okay. One second, one second. Press
24 pause. [REDACTED] did you look at the videos yourself?

25 [REDACTED] The -

[REDACTED]

1 THE COURT: Of the two witnesses?

2 [REDACTED] The interviews of [REDACTED] and [REDACTED]

3 [REDACTED]

4 THE COURT: Yeah.

5 [REDACTED] Yes.

6 THE COURT: Yeah. And did you -- you understand
7 what she's talking about, which witness? Is it both
8 witnesses or just one?

9 MS. LEVI: Just one.

10 THE COURT: Do you know which witness she's
11 talking about?

12 [REDACTED] I believe you're referencing [REDACTED]

13 [REDACTED]

14 MS. LEVI: What are you talking about? Yeah.

15 [REDACTED] That's who you're referencing?

16 MS. LEVI: Yes.

17 THE COURT: Okay. Gotcha. Understood.

18 MS. LEVI: And I will proffer actually that we did
19 send, again, and I know the Court has really indulged me -
20 I did send an e-mail quite a bit ago saying -- many months
21 ago that there's other interviews referenced in discovery;
22 can we please have those. Then again, the motion to compel.
23 I don't know how it got overlooked but --

24 THE COURT: So it -- let me cut to the chase.

25 MS. LEVI: There's new information -

[REDACTED]

1 THE COURT: You don't think my sanction is
2 sufficient.

3 MS. LEVI: Right. And because the other thing of
4 -- what I was trying to get to on the body camera, is that
5 we sent a message to the State months ago saying, look
6 they're all messaging on their phones, on body-worn camera,
7 can we please have those, and again, we got no response, and
8 we put it in the motion to compel. Their group messaging
9 and they're text messaging, can we please have those? And
10 if these are time-sensitive, it's even becoming more
11 important as time passes. And the State's response to our
12 motion to compel filed with the Court on the eve of the last
13 trial specially set, and that's in tab no. 5, subsection
14 page -- tab no. 5-1L as in [REDACTED] instant messages sent --
15 this was our request, instant messages sent between BPD
16 officers captured on body-worn camera related to the
17 investigation and the State's response was, the State will
18 not typo in Defense's request. I don't know what that
19 means, but will answer in kind that the Defense's request is
20 overly broad and the State has turned over all written
21 reports generated by officers and detectives. The State is
22 not in possession of any such correspondence. And so they
23 were completely non-responsive to our earlier requests for
24 this time-sensitive information and so here we are doing
25 some sort of Herculean effort and we're at this place where

[REDACTED]

1 I don't know how long it would take to get this evidence,
2 but we've been seeking it for a while. What I was going to
3 show you on the screen is -- I have to print this one
4 document out. So if the Court would allow me to show it
5 with --

6 THE COURT: So this is body-worn camera --

7 MS. LEVI: I call it bodycam screen grabs.

8 THE COURT: -- [REDACTED] Do you have this --
9 what --

10 MS. LEVI: I can print out the paper document as
11 -- and have -- I can have my paralegal go print it out right
12 now and bring I back to the Court to do the paper version
13 while I'm talking about it.

14 THE COURT: The paper version of -- is this a
15 video?

16 MS. LEVI: This is just a -- no, this not a video.
17 I just grabbed screenshots and put them onto a Word
18 document.

19 THE COURT: Okay.

20 MS. LEVI: So it's just something that could be
21 printed out.

22 THE COURT: Okay. Yes.

23 MS. LEVI: Okay.

24 THE COURT: I believe that machine will print it
25 out for you.

[REDACTED]

1 MS. LEVI: Oh. That's fantastic. You're
2 absolutely right.

3 THE COURT: There's a printer there.

4 MS. LEVI: I just have to --

5 THE COURT: Is --

6 MS. LEVI: -- have to put it on a flash drive.

7 THE COURT: [REDACTED], isn't there a printer
8 over there?

9 MS. LEVI: There is.

10 THE COURT: Yeah.

11 [REDACTED]: There is, Your Honor.

12 MS. LEVI: I'll just grab another flash drive out
13 of my purse, but if I can just --

14 THE COURT: Yeah. You can print it out from
15 there.

16 MS. LEVI: Okay. Great. And I even plug my
17 computer in and print it out straight from there.

18 THE COURT: Well, actually, your -- you can plug
19 it in right there where you're --

20 MS. LEVI: Where I'm standing?

21 THE COURT: Yes.

22 MS. LEVI: Really?

23 THE COURT: Yes. Yes. There's a cord over there
24 somewhere.

25 MS. LEVI: I am plugged -
[REDACTED]

1 THE COURT: [REDACTED] do you know where the
2 connection is? Yeah. You just --

3 MS. LEVI: I thought I had to take a flash drive
4 and plug it right into the printer.

5 THE COURT: Well, you can do there, too, but --

6 MS. LEVI: This is fantastic. I had no idea.

7 THE COURT: But my understanding is that if you're
8 connected to the screen right now, then you can hit --

9 MS. LEVI: But I'm not connected over the
10 internet, but I don't -- so I don't see --

11 THE COURT: You see where it says, Print?

12 MS. LEVI: Yeah, I'm hitting print and I'm looking
13 for the available printers and I don't see anything that's
14 in this courtroom. But I can put it on a flash drive and
15 walk it over and print it.

16 THE COURT: No, it's the device.

17 MS. LEVI: Right. I don't see that list -- that
18 device listed --

19 THE COURT: No.

20 MS. LEVI: -- unless I'm --

21 THE COURT: What's this device called, does
22 anybody know? What's the name of this thing?

23 THE CLERK: If I may, Your Honor.

24 THE COURT: This big thing.

25 MS. LEVI: Maybe it's this one?

[REDACTED]

1 THE COURT: Wait a minute, give her -- give him a
2 second he's looking. The printer's name is?
3 THE CLERK: It's Color LaserJet Pro M254dw.
4 THE COURT: Ms. Levi, go back to the printers.
5 MS. LEVI: I did. Sorry, file, print.
6 THE COURT: Go back, yeah, go back, now, under
7 printers, what is it called?
8 THE CLERK: It's Color LaserJet Pro M254dw.
9 THE COURT: Do you see that?
10 MS. LEVI: No. Think I have to be connected to
11 the -- I don't know. I don't see it, though. But I am
12 connected this way. Maybe I have to add printer. Add
13 printer.
14 THE COURT: I just don't know what it's called.
15 MS. LEVI: Okay. Well, if the Court would indulge
16 me to show it and then print it, one way or the another in
17 the next few minutes --
18 THE COURT: Yes.
19 MS. LEVI: -- would that be acceptable?
20 THE COURT: Why don't I do this -- [REDACTED] are
21 you okay? Do need to use the facilities?
22 THE DEFENDANT: I need to use the bathroom.
23 THE COURT: Okay. So would you take him
24 downstairs, let him use the bathroom -- or across the hall,
25 let him use the bathroom, bring him back. While I let that

[REDACTED]

1 occur, Ms. Levi, can you make --

2 MS. LEVI: Yes.

3 THE COURT: -- arrangements to print that out?

4 MS. LEVI: Yes. Yes.

5 THE COURT: And I don't care where you print it
6 out. And we're just going to take a brief recess. Can I
7 excuse -- yeah, you're excused. Thank you very much for
8 coming over.

9 [REDACTED] Just for clarification, Your Honor,
10 the outstanding documents, are they to be provided for your
11 review or straight to Defense?

12 THE COURT: They are the same content that was
13 previously forwarded in all the other 30 officers, right?

14 [REDACTED] Yes, they were the same.

15 THE COURT: And you -- then it's straight to her.

16 [REDACTED] Okay.

17 THE COURT: Because I'm going to treat [REDACTED]
18 [REDACTED] the same way had he been on that original list of
19 30 --

20 [REDACTED] Yes.

21 THE COURT: -- that he would have gotten -- she
22 would have gotten the same materials, so yes.

23 [REDACTED] Thank you.

24 THE COURT: And for the record, this is only to be
25 used, Ms. Levi -

[REDACTED]

1 MS. LEVI: Yes, I understand.

2 THE COURT: -- for this case. All right.

3 MS. LEVI: I always --

4 THE COURT: You're not to share it with --

5 MS. LEVI: Yes.

6 THE COURT: -- other folks.

7 MS. LEVI: I understand. There's no protective

8 order attach --

9 THE COURT: I'm just putting it on the record.

10 MS. LEVI: Yes.

11 THE COURT: So you can't say that I didn't say

12 that you shouldn't share it with anyone else.

13 MS. LEVI: Yes, and I will add to the record that

14 although it did not come with a protective order, I always

15 treat it as if I had a protective order in place because I

16 assume that they meant --

17 THE COURT: Well, we just gave -- I just you a

18 protective order.

19 MS. LEVI: Yes. Yes. Okay.


20 THE COURT: All right.

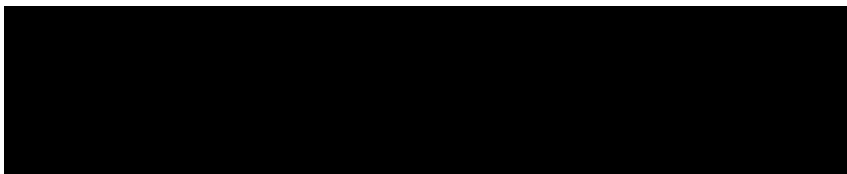
21 MS. LEVI: And even if you hadn't --

22 THE COURT: And then let the record reflect you

23 got expunged records so that's significant. I'm taking a

24 recess.

25  Thank you, Your Honor.



1 THE COURT: [REDACTED] is leaving the courtroom.
2 You're excused.

3 [REDACTED] Thank you.

4 THE COURT: And I will be back.

5 MS. LEVI: Thank you.

6 [REDACTED] Thank you.

7 THE COURT: All right.

8 THE CLERK: All rise.

9 THE COURT: Yes.

10 (Whereupon, at 12:26 p.m., proceedings recessed to
11 reconvene at 12:43 p.m.)

12 THE CLERK: All rise.

13 THE CLERK: All rise. Circuit Court for
14 Baltimore City [REDACTED] is back in session. The Honorable
15 [REDACTED] presiding.

16 THE COURT: Please be seated. Can we have him --
17 just the arm shackles for right now. Just the arm shackles
18 --

19 THE BAILIFF: Okay.

20 THE COURT: -- for right now. You have -- it's
21 12:30 and you have some additional items that you want to
22 offer.

23 MS. LEVI: Just briefly.

24 THE COURT: Okay. I want you to mark them.

25 MS. LEVI: Yes.

[REDACTED]

1 THE COURT: Have they been marked, Defense
2 exhibits.

3 MS. LEVI: I put them on a flash drive and we just
4 labeled them but I don't have a sticker yet, a blue sticker,
5 No. 5.

6 THE COURT: Can we put the flash drive in an
7 envelope and we'll call that No. 5.

8 MS. LEVI: Thank you, Your Honor.

9 THE COURT: And they reflect the clips that you
10 have excerpt from various body-worn camera?

11 MS. LEVI: Yes.

12 THE COURT: And they are going to be offered in at
13 this time?

14 MS. LEVI: Thank you, Your Honor.

15 THE COURT: Ms. Levi, I am fully aware that you
16 would like to have the case dismissed. On Friday, I
17 mentioned to you, and my opinion does not change, that I do
18 believe there is a State's discovery violation that requires
19 your attention in terms of the evidence that they need to
20 disclose. What I'm going to ask you to do is the following:
21 I'm going to ask you to put together a list of those items
22 that you believe you are still missing. I need a full list
23 of those items that you believe can be fairly perceived to
24 be generated from what you have. In other words, where you
25 believe there must be more, including but not limited to any

1 information from GroupMe.

2 MS. LEVI: Okay.

3 THE COURT: And I need you to file a written
4 request to me --

5 MS. LEVI: Okay.

6 THE COURT: -- which I will review and have no
7 doubt that I'm going to sign it.

8 MS. LEVI: Okay.

9 THE COURT: [REDACTED] I'm going to ask that you
10 do the same. I need you to go through your file and
11 determine what things you are missing that you believe the
12 police department has yet to turn over to you, that through
13 your investigation you can conclude has -- been -- can be
14 fairly inferred exists and you have not received from the
15 police department.

16 [REDACTED] Yes, Your Honor.

17 THE COURT: I want that list no later than close
18 of business on Friday of this week which is [REDACTED]
19 In the meantime, let the record reflect that although I find
20 that the State has failed to meet the discovery obligations
21 and that this information as been documented on this record
22 by this Court, continues to be an ongoing disclosure, the
23 case being indicted in [REDACTED]
24 According to the indictment that I looked at, I believe it
25 was signed and charges filed on [REDACTED] It's not yet a

[REDACTED]

1 year. I decline to grant your motion to dismiss, but I am
2 directing that this case be postponed and continued. It
3 will be up to Judge -- that's why I'm asking you to move
4 quickly -- up to [REDACTED] to reschedule it and
5 set a new date. I am asking the two of you to check your
6 calendars. If it can be rescheduled during a time in the
7 next 30 days or so, I'll be happy to try it myself. If not,
8 I have 35 other judges on this bench, somebody should be
9 able to try it. Logistically, I think it's going to be more
10 than 30 days in order for you to get the subpoenas out to
11 GroupMe and get their response; however, I'm asking that
12 your list gets to me by Friday and I'm asking that your list
13 be to me by Friday so that I can issue an order, ordering
14 that these documents be turned over or released, whatever is
15 contained on them.

16 In the meantime, I'm going to remind the State of
17 its ongoing obligation to disclose information to the
18 Defense and it's information that you either know exist,
19 suspect that it exists, or have a fair and reasonable way of
20 receiving it by way of subpoena and turning it over,
21 specifically and not limited to the GroupMe content from the
22 date of the discovery of the gun. I will tell you that it
23 is not far-reaching, based on what I've seen, that there
24 must be more and if it's out there and available, the State
25 has an obligation to retrieve it and to turn it over to the

[REDACTED]

1 Defense without me signing an order for you to do so.

2 I am concerned about justice and fairness to your
3 client. I do not in any way let -- want this record to
4 reflect that you have not done anything other than an
5 excellent job.

6 MS. LEVI: Thank you.

7 THE COURT: You have attempted to represent your
8 client in a fair and reasonable way and have been effective
9 to the extent you can be, but you don't have everything you
10 need to try this case. And it would be a violation of his
11 constitutional rights for me to push you to trial just
12 because I want to stay on a schedule. I won't do it. It's
13 not fair, it's not right, and it's not just, which is why
14 I'm going to allow you to go to see [REDACTED]
15 for a postponement.

16 This case, as much as we would like to get it to
17 trial within Speedy Trial, is beyond Speedy Trial at this
18 point. I understand that. On the other hand, I further
19 understand that sometimes you have to go beyond Speedy Trial
20 in order to ensure that rights are protected, and I am in
21 that way balancing those rights to fairness and justice when
22 I send you to postponement court and deny the motion for a
23 dismissal of the charges for the State's failure to meet its
24 obligations under the discovery rule. I understand that's
25 what you wanted and I understand that's why you were making

[REDACTED]

1 the record, but I've weighed everything. I've weighed what
2 they've done. I've weighed how they've done it. I've
3 weighed what [REDACTED] has done, the good faith effort he
4 made as soon as he was made aware of items. I also
5 understand and that there is occasions when there is an
6 overwhelming docket.

7 I, myself, will note that I have been squeezed
8 into a schedule of back-to-back trials and with little area
9 and energy to even catch a breath. Literally, at one point,
10 I had two juries going at the same time. One deliberating,
11 and the other one just picked, and they're deliberating in
12 the second conference room which I made a jury room.

13 You deserve better, [REDACTED] and I won't be
14 party to ending justice. You deserve the right to have a
15 very good lawyer, which you have, try this case on your
16 behalf with everything she needs to represent you.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: I don't know what the outcome of the
19 case is going to be. I don't know. But you can't tie your
20 lawyer's hands behind her back and ask her to fight for you,
21 and that's all you've got when it comes to a trial. So
22 that's why you're going to see [REDACTED] right
23 now.

24 MS. LEVI: Judge, here's [REDACTED]

25 THE COURT: And [REDACTED] is in evidence.

[REDACTED]

1 (Whereupon, Defendant's Exhibit No.
2 5 was received into evidence.)

3 THE COURT: And number 5 is in evidence. [REDACTED]

4 [REDACTED] said okay, send them now to 215. And I'm going to
5 ask the Clerk, if you don't mind, walking that file down to

6 [REDACTED]
7 THE CLERK: No problem.

8 THE COURT: I'm going to send you there now. And
9 has she been having the Defendants in court with you?

10 MS. LEVI: I usually am in [REDACTED] candidly, but --

11 THE COURT: In [REDACTED] have they been having the
12 Defendants present?

13 MS. LEVI: [REDACTED] for the postponement does
14 not prefer it.

15 THE COURT: [REDACTED] do you want to be present?

16 THE DEFENDANT: Yes.

17 THE COURT: Then take him to [REDACTED] in
18 [REDACTED]

19 [REDACTED] Your Honor, can I just inquire with
20 the Court, as well, because I understand the lists are going
21 to be submitted to the Court --

22 THE COURT: Yes, they're to be submitted to me so
23 that they -- what I -- my plan is that you are going to make
24 a cc copy -- you're going to put a copy in the Court file.
25 You're going to file a copy with the Court and you're going

[REDACTED]

1 to give me a copy. I'm going to look at it, and I may
2 result in issuing an order that says you shall turn this
3 stuff over by X date. I, at this point, don't know what the
4 trial date's going to be.

5 [REDACTED] Well, Your Honor --

6 THE COURT: But you do -- but it's due on Friday
7 here.

8 [REDACTED] The reason for the questioning is
9 with any subpoenas -- aside from GroupMe, if we are dealing
10 with department cell phones that either aren't being used
11 any more, with any subpoenas additionally, that the State
12 would have to send out. Now, it's my understanding that
13 other than maybe call logs, any subpoena received from a
14 telecom provider, unless we actually have the physical phone
15 to do a dump, it's not going to actually have a -- the text
16 message correspondence. So that -- I'm just -- I'm trying
17 to realistically -- if it's within 30 days, I just don't
18 know whether or not any of the telecom providers -- I'm
19 going to do my best, but it may take more than 30 days in
20 order to obtain --

21 THE COURT: Well, then you need to tell [REDACTED]
22 [REDACTED] that.

23 [REDACTED] Yes, Your Honor. I just --

24 THE COURT: Because I'm not -- I haven't signed an
25 order yet.

[REDACTED]

1 [REDACTED] I understand.

2 THE COURT: Because I don't know what the trial
3 date she's going to pick.

4 [REDACTED] Yes, Your Honor.

5 THE COURT: So I guess you better make a pitch to
6 [REDACTED] to give you enough time to get what you need.

7 [REDACTED] Yes, Your Honor.

8 THE COURT: I'm sorry, [REDACTED] I didn't
9 paint you into this corner.

10 [REDACTED] I understand.

11 THE COURT: But in the corner you are. So you're
12 about to go see [REDACTED] If you think you need more
13 than 30 days, then I guess you're going to have to ask her
14 for a date more than 30 days.

15 [REDACTED] Yes, Your Honor.

16 THE COURT: But I'm going to sign an order on
17 Friday, and by Friday I'll know what date [REDACTED]
18 picked.

19 [REDACTED] Yes, Your Honor.

20 MS. LEVI: Your Honor, may I --

21 [REDACTED] And Your Honor like --

22 THE COURT: That's why I said Friday. What?

23 [REDACTED] Would Your Honor like the parties to
24 notify you as to the date or changes?

25 THE COURT: No, trust me, you don't think I can
[REDACTED]

1 figure out from [REDACTED] --

2 [REDACTED] I just --

3 THE COURT: -- and JIS what date this case is
4 postponed to?

5 [REDACTED] Just wanted to --

6 THE COURT: Trust me, I could even figure out, I'm
7 sure, what judge is going to get it.

8 [REDACTED] Yes, Your Honor.

9 THE COURT: Yes.

10 MS. LEVI: Your Honor, if I may, I don't believe
11 because of that proffer from the State we may get back in
12 front of Your Honor --

13 THE COURT: I am --

14 MS. LEVI: -- and I just want to say one thing, if
15 I may, I just --

16 THE COURT: You haven't seen [REDACTED] yet.

17 MS. LEVI: No, no, no.

18 THE COURT: I -- for all I know, [REDACTED]
19 may say --

20 MS. LEVI: You don't know what I'm going to say.

21 THE COURT: Ms. Levi, [REDACTED] may say,
22 you're back in front of [REDACTED] I don't
23 know what she's going to -- and when we -- if that's what
24 she says --

25 MS. LEVI: Right.

[REDACTED]

1 THE COURT: -- then I guess the State, as the old
2 saying goes, we'll have to fish or cut bait because I'm
3 going to issue an order on or about Friday after I get your
4 information.

5 MS. LEVI: Okay. I just wanted to say I very much
6 appreciate it from [REDACTED]'s benefit the way the Court
7 articulated that justice is the highest priority, regardless
8 of outcome, regardless of whether we agreed or disagreed,
9 the Court's delivery of the speech on the high -- the value,
10 justice above all versus getting it done is something that
11 my clients don't typically have the luxury and the privilege
12 to hear, and it was really for us an important moment and I
13 wanted to thank Your Honor for saying that so nicely.

14 THE COURT: Ms. Levi, I've been on this bench for
15 21 years and when I took that oath, I took the oath that in
16 my courtroom justice would be done. I can only be
17 responsible for what I do in my courtroom.

18 MS. LEVI: We just want to say thank you.

19 THE COURT: And I hope my record stands for
20 itself.

21 MS. LEVI: I know that, too.

22 THE COURT: And that's it.

23 MS. LEVI: Just want to say thank you.

24 THE COURT: I'm not responsible for anything else
25 -- my father used to say to me before he died, I have a hard

[REDACTED]

1 enough time trying to take care of [REDACTED] to worry about what
2 other people are doing. It my courtroom, as long as I'm a
3 sworn judge, that's how I do business. Period. I'm not on
4 your side, [REDACTED] And I'm not on our side.

5 MS. LEVI: I understand that.

6 THE COURT: And [REDACTED] I'm not on our side.
7 I think I told you that day one. My job is to make sure you
8 get a fair trial and let the chips fall where they may, but
9 you can't hide the ball. You can't tie her hands behind her
10 back. I've been a State's attorney and a federal
11 prosecutor. I've been a Defense attorney and a federal
12 public defender. I know what you both have to do. It's
13 hard work, but I know sometimes people hamper your ability
14 to do your job. I'm not holding that against you, but you
15 got to still got to get the information and if you tell them
16 that they may end up getting a judge's order and if they
17 don't want to give up their records, then I might subpoena
18 them individually to get up on my witness stand here and
19 tell me why, under oath, they don't have the records? You
20 need to let them know.

21 [REDACTED] Yes, Your Honor.

22 THE COURT: I'm not playing, but it'll be a quick
23 afternoon. [REDACTED], get on the witness stand, under
24 oath. Did you or did you not text messages during that
25 raid? Where is our phone? What is your number? Next. And

[REDACTED]

1 as for the Defense. You're just entitled to it. What you
2 do with it is another story. How it helps you or doesn't
3 help you; that's between you and your client, but you're
4 entitled to get it.

5 MS. LEVI: Thank you, Your Honor.

6 THE COURT: Anything else?

7 [REDACTED] No, Your Honor.

8 MS. LEVI: No, Your Honor.

9 THE COURT: [REDACTED] right now, [REDACTED]
10 Please go there. Exhibit No. 3. Exhibit No. 3 from the
11 State, I took it?

12 THE CLERK: Yes, ma'am.

13 MS. LEVI: I'm just going to retrieve my cord; is
14 that okay?

15 THE COURT: Exhibit No. 3, the State. You know
16 what? I think it may be on my desk. Wait one second.

17 THE CLERK: All rise.

18 THE COURT: No, no, no.

19 (Whereupon, at 12:58 P.m., the proceedings
20 concluded.)

21 -oOo-

CERTIFICATE OF TRANSCRIBER

I hereby certify that the proceedings in the
matter of *State of Maryland v.* [REDACTED] Case No.
[REDACTED] heard in the Circuit Court for Baltimore City,
[REDACTED]

Maryland on [REDACTED] was recorded by means of digital recording.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 89 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness whereof, I have affixed my signature this [REDACTED]

[REDACTED]

[REDACTED]

Exhibit 3

6PD

STATE OF MARYLAND

v.

[REDACTED]

*
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*

IN THE
CIRCUIT COURT
FOR BALTIMORE CITY
CRIMINAL DIVISION

[REDACTED]

To: The Honorable [REDACTED]

Defendant's Request for Outstanding Discovery Items, Known to Defense at this Time

At this Honorable Court's request from [REDACTED] by and through his attorneys Deborah Katz Levi and [REDACTED] hereby files this Request for Outstanding Discovery Items, Known to Defense at this Time. This list is not exhaustive, as [REDACTED] can only ask for items known to him, and this pleading in no way relieves the State of its obligations to disclose discovery pursuant to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; Articles 21, 24, 25 and 26 of the Maryland Declaration of Rights; and Rule 4-263 of the Maryland Rules of Criminal Procedure.

As previously asserted, [REDACTED] maintains that he is entitled to this discovery pursuant to Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972); Kyles v. Whitley, 514 U.S. 419, 437 (1995); State v. Williams, 392 Md. 194 (2006); and Williams v. State, 364, Md. 160 (2001).

In support of this pleading, [REDACTED] states as follows:

1. [REDACTED] has been held without bail for over a year.

2. [REDACTED] has been specially set for trial two times, and he has not waived his constitutional right to a speedy trial.
3. Both of [REDACTED] specially set trials have been postponed, over [REDACTED] objection, because this Honorable Court found that the State violated its obligations under the rules of discovery.
4. The State withheld multiple items of discovery that were in its actual and constructive possession.
5. The State failed to perform its due diligence.
6. Up to this point, the State has withheld the following:
 - a. Recorded statement by [REDACTED] taken in [REDACTED] produced to defense in [REDACTED]
 - b. Recorded statements by [REDACTED] taken in [REDACTED] produced to defense in [REDACTED]
 - i. Not only did the State fail to produce these recorded statements of witnesses until after [REDACTED] second specially set trial date, but it affirmatively represented to this Honorable Court in [REDACTED] on the eve of specially set trial number one, that it had produced all recorded statements to defense.
 - c. Recorded statement by [REDACTED] an unindicted co-conspirator, taken in [REDACTED] and produced to defense in [REDACTED]
 - d. Internal Affairs files related to Baltimore Police Department (BPD) [REDACTED] [REDACTED] who found the weapon alleged to be used in the above-captioned homicide.

- e. The fact that the State's Attorney's Office for Baltimore City was prosecuting [REDACTED] for perjury *because he lied in his capacity as a law enforcement officer about finding a weapon*. This information was not ever produced to defense. Rather, it was acknowledged as true on [REDACTED] in open court after the defense discovered this information on its own. The State claimed it was unaware of its own office's prosecution of [REDACTED] [REDACTED] [REDACTED] trial ended in a guilty verdict the day before [REDACTED] second specially set trial began. The SAO released a press release congratulating itself for the conviction, while failing to disclose this *Brady* material to [REDACTED] See Attached, Exhibit 1.
- f. Raw footage from surveillance cameras that the State intends to use at trial.
- i. [REDACTED] requested this information numerous times, via email and pleadings, it was captured by BPD in [REDACTED] and produced to defense in [REDACTED] only after defense counsel discovered its existence during an evidence review at BPD headquarters.
 - ii. The State never inquired with BPD as to the footage's existence, even though it was obvious from the State's original discovery that the raw footage existed. Regardless, the law presumes that the State knows what is in BPD's possession, as it relates to the case being prosecuted.
- g. Grand Jury testimony
- i. The State was ordered to produce this testimony in [REDACTED] and held onto it until defense filed a motion to compel in [REDACTED]
- h. Mobile crime lab reports

- i. The State only produced these routine discovery items in response to defense counsel's motion to compel.
- i. Evidence control documents
 - i. The State only produced these routine discovery items in response to defense counsel's motion to compel.
- j. Extensive body worn camera footage
 - i. The State only produced these routine discovery items in response to defense counsel's motion to compel.
- k. Search and seizure returns for [REDACTED]
 - i. The State only produced these routine discovery items in response to defense counsel's motion to compel.
- l. Search and seizure affidavits for the search warrant of [REDACTED]
 - i. The State only produced these routine discovery items in response to defense counsel's motion to compel.
- m. Search and seizure affidavits and warrants for DNA
 - i. The State only produced these routine discovery items in response to defense counsel's motion to compel.
- n. Mobile crime lab photos
 - i. The State only produced these routine discovery items in response to defense counsel's motion to compel.
- o. Video retrieval forms
 - i. The State only produced these routine discovery items in response to defense counsel's motion to compel.

All of these items, and more, were produced during the first specially set trial date or the second. Yet, even now, the State has still not complied with its discovery obligations, as the following items are still outstanding, or have just been produced.

1. OPEN IAD FILES

- a. At the Court's direction, the State produced some IAD files related to officers who took part in the investigation of the above-captioned matter.
- b. Defense counsel inquired as to open and expunged files. These are still outstanding.
- c. Since [REDACTED] second specially set trial date, defense counsel has received the following late discovery:
 - i. An IAD complaint that originated from a deputy state's attorney regarding a claim that a BPD officer was dishonest.¹
 - ii. A second IAD complaint that originated from a supervisor in the State's Attorney's Office alleging that three officers, involved in the above-captioned

¹ The State walks a bold line asserting that it did not know of the dishonestly claim when the complaint originated from its own office. As Judge Bell explained,

Brady also mandates that . . . the State's duty and obligation to disclose exculpatory and mitigating material and information extend beyond the individual prosecutor and encompass information known to any prosecutor in the office. Generally, Brady violations cover a variety of prosecutorial transgressions involving the breach of the duty to disclose exculpatory evidence. Strickler, 527 U.S. at 280. **These transgressions include both the failure to search for, and the failure to produce, such evidence.** In re Sealed Case, 337 U.S.App.D.C. 332, 185 F.3d 887, 892 (D.C.Cir.1999).

State v. Williams, 392 Md. 194, 210, 896 A.2d 973, 982 (2006).

matter, failed to document or report on a use of force that include a strangling choke hold.

- iii. A third IAD complaint made by an officer involved in the above-captioned matter that another officer, also involved in the above-captioned matter, threatened to kill people if he were to be indicted by the federal government. The threat was particularized as to the type of weapon the officer would use and where he would carry out the killings against innocent people.
- d. There is NO justification for the State Attorney's Office to have withheld this information past two specially set trial dates, a motion to compel, and a motion to dismiss.
- e. But for defense counsel continuing to assert, rather blindly, that discovery was missing, these violations would likely have gone undetected.
- f. As a result, [REDACTED] asks this Court to order production of all other officers' complete IAD files including open and expunged files, including but not limited to [REDACTED] who are referenced in a chart provided to defense counsel as having undisclosed files..

2. LATENT PRINT REPORTS

- a. The State asserts no suitable prints were found in the decedent's vehicle, no records to that effect have been produced.

3. TEXT MESSAGES AND GROUP ME MESSAGES

- a. Officers including those on patrol, in the northern district action team, SWAT, and in homicide, are seen on body worn camera using their cellphones to send messages related to this case. This State acknowledged the same. As a result, this Honorable Court verbally ordered the State to subpoena Group Me and text messages, and if

necessary, investigate the physical phones. [REDACTED] requests that this Court pass a written order requiring the State to furnish all Group Me, text and other electronic messages related to the officers involved with the above captioned matter, including those who executed a search warrant on [REDACTED] and those who investigated the homicide, *including but not limited to* [REDACTED]
[REDACTED]

4. ADDITIONAL TEXT MESSAGES

- a. Any text messages related to, and photos of, alternate suspects shared on electronic communications.

5. ALTERNATE SUSPECT INFORMATION

- a. Any information on the individuals fleeing in other directions after the shooting including the male in a red shirt [REDACTED]
- b. Any and all information on the person BPD tackled and detained in a gas station on [REDACTED] captured on BWC.

6. WITNESS INFORMATION

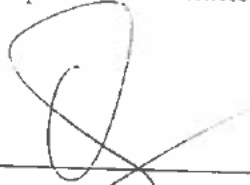
- a. The identification of the individual who provided surveillance footage from [REDACTED]
[REDACTED]

7. SURVEILLANCE FOOTAGE

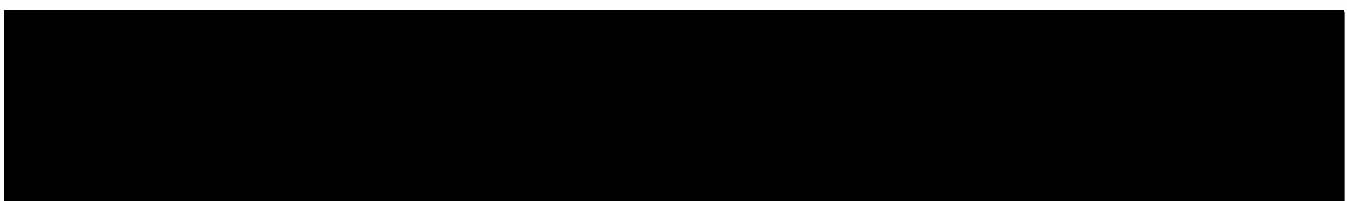
- a. Any other information related to the civilians' surveillance systems.

The State has wasted two trial dates, and concedes it failed to perform its due diligence. This Honorable Court's only sanction has been a continuance. [REDACTED] renews his request to impose some sanction, including exclusion of the witnesses—civilian and police—whose discovery has been withheld, or to dismiss the above-captioned matter in the interest of justice, or any other result that justice so requires.

Respectfully submitted,



Deborah K. Levi
Attorney for



Deborah Katz Levi
Assistant Public Defender

STATE OF MARYLAND

v.



IN THE
CIRCUIT COURT
FOR BALTIMORE CITY
CRIMINAL DIVISION



* * * * *

ORDER OF COURT

It is this _____ day of _____ 2019, by the Circuit Court for Baltimore City, Maryland hereby:

ORDERED, that the State shall produce, within fifteen (15) days, all above-mentioned discovery, including all open and expunged IAD files for all officers involved in the above-captioned matter, and all text and group me messages, or this Court will dismiss the above captioned-matter or impose a different sanction, required by justice.

OR, a hearing is scheduled for _____, 2019.

JUDGE

Exhibit 1



Office of the State's Attorney for Baltimore City

Press Releases

BPD Officer Found Guilty of Giving False Testimony in Handgun Case

Baltimore, Maryland (October 31, 2019) Today, after a three-day bench trial, Baltimore Police Department (BPD) Officer Michael O'Sullivan was found guilty of perjury and misconduct in office for his testimony given in a district court trial on June 4, 2018. Perjury is a misdemeanor punishable by up to 10 years in prison. Sentencing is scheduled for December 3, 2019.

Assistant State's Attorney Steven Trostle prosecuted this case.

On May 31, 2018, Officer O'Sullivan along with other BPD officers learned information about a possible man involved in illegal activity, possibly armed with a gun in the area of the 5600 Block of The Alameda. When officers went to that location, a firearm was found on the ground and officers, after a brief chase, caught a fleeing Yusuf Smith.

During Mr. Smith's trial, Officer O'Sullivan testified that he saw Yusuf Smith reach for his waistline and throw a gun before fleeing from the police. It was later discovered, after a thorough review of body-worn camera footage, that Officer O'Sullivan did not, and could not, have seen what he testified to under oath while in court. The State revisited Mr. Smith's conviction and entered a nolle prosequi in the matter. The State then sought and obtained a grand jury indictment against Officer O'Sullivan alleging perjury and misconduct in office. The Judge agreed with the charges, in finding that Officer O'Sullivan perjured himself and did not, and could not, have seen what he claimed to witness.

"As prosecutors, entrusted with virtually unlimited prosecutorial discretion, we are always justified in pursuing wrongful or questionable charges when our decisions carry unintended collateral consequences that could potentially follow someone in perpetuity," said state's Attorney Mosby, "It is our responsibility to pursue justice for the citizens of Baltimore by holding all criminal actors accountable even if they wear a uniform and a badge. The natures of these cases are challenging but accountability is more important than any challenge we may face."

Misconduct in office is a common-law offense that has no statutory penalty.

CONTACT

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IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND

*

vs.

*

KERRON ANDREWS

*

CASE NOS: 114149007, 08, 09

* * * * *

MOTION TO SUPPRESS

COMES NOW the Defendant, KERRON ANDREWS, by and through his attorney, Deborah Katz Levi, and hereby moves this Honorable Court to suppress the evidence obtained in the above-captioned matter because (1) it was obtained in violation of the Fourth Amendment to the United States Constitution; and (2) evidence related to the seizure that implicated the Fourth Amendment was intentionally and willfully withheld, in violation of Rule 4-263 of the Maryland Rules of Criminal Causes. Further, Mr. Andrews moves this Court to suppress his statements, as they were obtained in violation of article 22 of the Maryland Declaration of Rights, the Fifth Amendment to the United States Constitution, and *Miranda v. Arizona*.

BACKGROUND

On or about May 30, 2014, Mr. Andrews was indicted for (1) three counts of attempted first-degree murder and related lesser-included offenses; and (2) three counts of using a firearm in the commission of a crime of violence and related lesser-included offenses. Initial discovery was provided in July of 2014, which ambiguously referred to the fact that Mr. Andrews "was located" at 5032 Clifton Avenue. Suspecting that stingray or other surreptitious technology¹ was used in this case, Mr. Andrews filed a supplemental

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¹ "StingRay" is the name for a line of cell site simulator technology sold by the Harris Corporation. Other Harris cell site simulator models include the "TriggerFish," "KingFish," and "Hailstorm." Ryan Gallagher, *Meet the Machines That Steal Your Phone's Data*, Ars Technica, Sept. 23, 2013, <http://arstechnica.com/tech-policy/2013/09/meet-the-machines-that-steal-your-phones-data>. Stingrays, and

discovery request on November 3, 2014, seeking, among other things:

Any and all notes, documents, search warrants, location information and reports of any kind related to the pen register trap and trace and GPS tracking of Mr. Kerron Andrews and or phone number 443-208-2776. . .

All evidence indicating how Mr. Andrews was located at 5032 Clifton Avenue. . . .

Any and all reports, of any kind, related to the search and seizure warrant executed on May 5, 2014 at 5032 Clifton Avenue, produced by Sargeant Fallon, Sargeant Felker, Detective Carvell, Detective Johnson, Detective Hollingsworth, Detective Witmer, Police Officer Green, Police Officer Jones and Detective Spinatto, including but not limited to the time and order of entry of each individual officer.

Supp. Disco. Request, Nov. 3, 2014, Attached as Exhibit I.

On January 8, 2015, the State responded that it was not in possession of any of the requested evidence, but would provide it as soon as it became available. *See* State's Response, Attached as Exhibit II.

Based on the testimony provided in the discovery hearing conducted in this matter over the course of several days in May and June, 2015, that simply was not true. More specifically, as Mr. Andrews was preparing for his fourth trial date, he learned that Detective Converse withheld a negative photo array. After that revelation, and just days before the fourth trial date, the State revealed that the officers in this case did in fact use surreptitious technology to locate Mr. Andrews: "Yes, it is my understanding that ATT used a stingray to locate your client via his cell phone, then WATF actually arrested him. That is the paperwork I am waiting for." *See* Email dated May 6, 2015, Attached as Exhibit III.

other models of cell site simulators, are also called "IMSI catchers," in reference to the unique identifier—or international mobile subscriber identity—of wireless devices that they track. Stephanie K. Pell and Christopher Soghoian, *Your Secret Stingray's No Secret Anymore: The Vanishing Government Monopoly Over Cell Phone Surveillance and Its Impact on National Security and Consumer Privacy*, Harv. J.L. & Tech. (May 15, 2014), <http://ssrn.com/abstract=2437678>. Although "StingRay" refers to a specific line of products, the term "stingray" in this brief generically refers to cell site simulators.

Also on or about the fourth trial date, the State turned over a 24-hour incident report alluding to the fact that stingray or other similar surreptitious technology was used in this case. That report was prepared over a year ago on May 5, 2014. *See* 24-Hour Report, Attached as Exhibit IV.

Based on these and other discovery violations, the Honorable Judge Charles Peters held a multi-day discovery hearing, at the conclusion of which he ruled that Detective Jeffrey Converse intentionally withheld exculpatory evidence; his conduct was so egregious that he could not be considered credible; and he barred him from testifying in the above-captioned matter.

As part of the discovery hearing, the Court ordered the State to provide all information related to the use of stingray technology by May 21, 2015. On May 18, 2015, the State revealed the trap and trace warrant application and order for what it alleges to be Mr. Andrews' phone number, significant details about how surreptitious technology was used in this case, information which it had access to, via reporting officers, since May 5, 2014. *See* Notes from Meeting with ATT, Attached as Exhibit IV. Not only was this information requested, and the State affirmatively denied having it, but it is also a required disclosure under Rule 4-263 of the Maryland Rules of Criminal Causes. The State withheld this information without any justification and caused over a year delay in Mr. Andrews' ability to litigate this issue, violating his right to a speedy trial.

As will be explained further below, this Court should suppress all evidence obtained from the warrant executed at 5032 Clifton Avenue because it relied on surreptitious technology, for which the government did not have a warrant. Moreover, the State intentionally withheld the evidence related to the use of the surreptitious technology.

I. This Court Should Suppress the Evidence Obtained in the Above-Captioned Matter Because the State Withheld Evidence it was Required to Disclose under Rule 4-263 and Cole v. State

Rule 4-263(d) clearly and unambiguously states that State must exercise due diligence to discover and disclose all relevant information relating to; “(7) *Searches, Seizures, Surveillance, and Pretrial Identification*. All relevant material or information regarding: (a) specific searches and seizures, eavesdropping, and electronic surveillance including wiretaps.” Pursuant to Rule 4-263, the State is under a direct and specific obligation to disclose any and all materials related to electronic surveillance, yet it failed to abide by that requirement, even when such discovery was specifically requested. That the evidence was not in the direct possession of the Assistant State’s Attorney is of no moment. Rule 4-263 states that the State’s Attorney must exercise due diligence in identifying material that is required to be disclosed and the discovery obligations extend to information in the possession of law enforcement that reports to the State’s Attorney on a particular case:

(1) Due Diligence. The State's Attorney and defense shall exercise due diligence to identify all of the material and information that must be disclosed under this Rule.(2) Scope of Obligations. The obligations of the State's Attorney and the defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case.

Md. Rule 4-263(c).

Furthermore, disclosure is required in accordance with *Cole v. State*, 378 Md. 42 (2003). In that case, the Court of Appeals held that the State was required to produce discovery of a laboratory’s standard operating procedures, including quality assurance manual, calibration records, and discovery of the operator’s own proficiency records. The

Cole Court stated, “The defendant was entitled to challenge the accuracy of any test and understand exactly how the test was performed; he was not required to demonstrate, before even gaining access to the desired information and documents that the test results were inaccurate or the procedures faulty.” *Id.* at 65.

In the above-captioned case the State acknowledges that surreptitious technology was used. It is undisputed that the State failed to timely disclose this information and when asked directly about it, denied having it. Further, Detective Converse testified that he could have easily gathered all of the discovery related to the use of the surreptitious technology, but he was never asked about Mr. Andrews’ discovery request, filed in November of 2013. There is no justification for the State’s failure to provide this evidence, and the withholding was willful. Moreover, by withholding the information that Mr. Andrews is also entitled to under *Cole*, the State is attempting to prevent the defense from cross-examining their operator as to his qualifications.

II. This Court Should Suppress the Evidence Obtained from 5032 Clifton Avenue because the Warrant was Based on Illegally Obtained Information

This Court should suppress the evidence obtained from 5032 Clifton Avenue because the warrant for that property was based on illegally seized information. The Baltimore Police Department received a pen register trap and trace warrant for what it believed to be Mr. Andrews’ cellphone. From the information obtained from the trap and trace warrant, the police employed a Stingray-type device, called a hailstorm, without a warrant, to peer into all the homes in the neighborhood where the officers suspected Mr. Andrews to be located to search for Mr. Andrews. This warrantless intrusion violates the

Fourth Amendment to the United States Constitution and the officers were required to have a warrant for this type of search.

A. The Use of the Stingray Machine Implicates the Fourth Amendment

Stingray devices masquerade as the cellular phone towers used by wireless companies such as AT&T and T-Mobile, and in doing so, force all mobile phones within the range of the device to emit identifying signals, which can be used to locate not only a particular suspect, but any and all bystanders as well. In Mr. Andrews' case, it is undisputed that the Baltimore Police emitted signals into 5032 Clifton Avenue to force a mobile phone within the home to transmit its identification and location information. This intrusion requires a warrant.

First, the devices broadcast invisible electronic signals that penetrate walls of Fourth Amendment-protected locations, including homes, offices, and other private spaces occupied by the target and innocent third parties in the area. Stingrays force cell phones within those spaces to transmit data to the government that they would not otherwise reveal to the government, and allow agents to determine facts about the phone and its location that would not otherwise be ascertainable without physical entry. By pinpointing suspects and third parties while they are inside constitutionally protected spaces, stingrays invade reasonable expectations of privacy. *See Kyllo v. United States*, 533 U.S. 27, 34 (2001) (thermal imaging to detect heat from home constituted search); *United States v. Karo*, 468 U.S. 705, 715 (1984) (monitoring of beeper placed into can of ether that was taken into residence constituted search).

In addition, stingrays effectively trespass into protected spaces, as they send electronic signals that penetrate the walls of homes and offices in the vicinity in order to seek information about devices in interior spaces. *See Silverman v. United States*, 365 U.S. 505, 509

(1961) (use of “spike mike,” a microphone attached to spike inserted into walls of house, constituted “unauthorized physical penetration into the premises” giving rise to a search); *United States v. Jones*, 132 S. Ct. 945, 949 (2012) (installation and monitoring of GPS on suspect’s vehicle constituted search because of “physical intrusion” “for the purpose of obtaining information”). No warrant, let alone a pen register warrant, permits the police to search the homes of every house in a neighborhood. Yet, with the stingray, the police do precisely that, searching every home, vehicle, purse, and pocket in a given area without anyone ever learning that their devices were searched by the police.

Second, the devices can pinpoint an individual with extraordinary precision, in some cases “with an accuracy of 2 m[eters].”² *United States v. Rigmaiden*, a criminal case from the District of Arizona, is one of the few cases in which the government’s use of stingrays has been litigated. In that case, the government conceded that agents used the device while wandering around an apartment complex on foot, and that the stingray ultimately located the suspect while he was inside his unit. *See United States v. Rigmaiden*, No. CR 08-814-PHX-DGC, 2013 WL 1932800, at 15 (D. Ariz. May 8, 2013). In another case in Florida, *State v. Thomas*, a Tallahassee Police officer testified about how, using a handheld cell site simulator, he “quite literally stood in front of every door and window” in a large apartment complex “evaluating all the handsets in the area” until he narrowed down the specific apartment in which the target phone was located.³ As the officers testified in this case, the officers did the exact same thing here, driving around a large apartment complex, emitting signals from the

² *See, e.g.*, PKI Electronic Intelligence GmbH, *GSM Cellular Monitoring Systems*, 12, http://www.pki-electronic.com/2012/wp-content/uploads/2012/08/PKI_Cellular_Monitoring_2010.pdf (device produced by a competitor to the Harris Corporation can “locat[e] ... a target mobile phone within an accuracy of 2 m[eters]”).

³ Transcript of Suppression Hr’g 14, 17, *State v. Thomas*, No. 2008-CF-3350A (Fla. 2d Cir. Ct. Aug. 23, 2010) [hereinafter “*Thomas* Transcript”], available at https://www.aclu.org/files/assets/100823_transcription_of_suppression_hearing_complete_0.pdf.

stingray machine until it located Mr. Andrews through the walls of the apartment he was located in.

Accurate electronic location tracking of this type requires a warrant because it intrudes on reasonable expectations of privacy. *Jones*, 132 S. Ct. at 964 (Alito, J., concurring in the judgement) (“[T]he use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy.”); *Id.* at 955 (Sotomayor, J., concurring); *Tracey v. State*, No. SC11-2254, 2014 WL 5285929, at 19 (Fla. Oct. 16, 2014) (“[T]he use of [a suspect’s] cell site location information emanating from his cell phone in order to track him in real time was a search within the purview of the Fourth Amendment for which probable cause was required.”).

Further, to the extent the government uses stingray devices without a warrant while walking on foot immediately outside people’s homes to ascertain information about interior spaces, it impermissibly intrudes on constitutionally protected areas. *See Florida v. Jardines*, 133 S. Ct. 1409 (2013) (government’s entry into curtilage with trained dogs to sniff for drug odors emanating from interior of home constitutes search).

Third, stingrays search the contents of people’s phones by forcing those phones to transmit their electronic serial number and other identifying information held in electronic storage on the device, as well as the identity of the (legitimate) cell tower to which the phone was most recently connected and other stored data. As the Supreme Court explained in no uncertain terms this year, searching the contents of a cell phone requires a warrant. *Riley v. California*, 134 S. Ct. 2473 (2014).

Fourth, Stingrays impact third parties on a significant scale. In particular, they interact with and capture information from innocent bystanders’ phones by impersonating one or more wireless companies’ cell sites and thereby triggering an automatic response from

all mobile devices on the same network in the vicinity.⁴ The government in *Rigmaiden* and *Thomas* conceded as much. *See Rigmaiden*, 2013 WL 1932800, at 20; *Thomas* transcript at 14. This is so even when the government is using a stingray with the intent to locate or track a particular suspect; collection of innocent bystanders' phone-identifying data and location information is inevitable and unavoidable using current stingray technology. Thus, when using a stingray the police infringe on the reasonable expectations of privacy of dozens or hundreds of innocent non-suspects, amplifying the Fourth Amendment concerns. Although there is a serious question whether dragnet searches of this nature are ever allowed by the Fourth Amendment, use of this technology must at least be constrained by a probable cause warrant that mandates minimization of innocent parties' data.⁵ *Cf. Berger v. New York*, 388 U.S. 41, 57–59 (1967).

Finally, stingrays can, as a side-effect of their normal use, disrupt the ability of phones in the area to make calls. Harris Corporation, the company that manufactures the StingRay, and at least one of its competitors have apparently taken steps to ensure that 911 emergency calls are not disrupted.⁶ However, emergency calls to doctors, psychologists, and family members may be blocked while the stingray is in use nearby. This is invasive in general, raises possible conflicts with federal law, *see* 47 U.S.C. § 333, and can have enormous consequences for anyone in an emergency situation trying to make an urgent call for

⁴ *See, e.g.*, Hannes Federrath, Multilateral Security in Communications, *Protection in Mobile Communications*, 5 (1999), http://epub.uni-regensburg.de/7382/1/Fede3_99Buch3Mobil.pdf ("possible to determine the IMSIs of all users of a radio cell"); Daehyun Strobel, Seminararbeit, Ruhr-Universität, *IMSI Catcher* (July 13, 2007), http://www.emsec.rub.de/media/crypto/attachments/files/2011/04/imsi_catcher.pdf. ("An IMSI Catcher masquerades as a Base Station and causes every mobile phone of the simulated network operator within a defined radius to log in.")

⁵ *See* Adam Lynn, *Tacoma Police Change How They Seek Permission to Use Cellphone Tracker*, News Tribune, Nov. 15, 2014, http://www.thenewstribune.com/2014/11/15/3488642_tacoma-police-change-how-they.html?sp=/99/289/&rh=1 (explaining that upon learning that police had been using cell site simulators without informing courts of such, judges in Tacoma, Washington, began requiring law enforcement agencies that want to use the devices to swear in affidavits that they will not store data collected from third parties who are not targets of the investigation).

⁶ Barrett, *supra* note 2

assistance. To avoid effecting an unreasonably invasive or destructive search, *see United States v. Ramirez*, 523 U.S. 65, 71 (1998), use of stingrays must be strictly constrained.

In light of these factors, use of a stingray is presumptively invalid unless the government obtains a valid warrant based on probable cause. *See Arizona v. Gant*, 556 U.S. 332, 338 (2009) (explaining that searches without a warrant are “*per se* unreasonable” (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967))). The government did not obtain a warrant to use a stingray device in this case. In fact, it did not request authorization to use a stingray at all, but misled the court by seemingly applying for an order authorizing installation of a pen register trap and trace device. The underlying Order was made pursuant to Maryland’s Pen Registers and Trap and Traces Devices Statute, which authorizes installation of such a device “if the court finds that the information likely to be obtained by the installation and use is *relevant to an ongoing criminal investigation*.” Md. Code Ann., Cts. & Jud. Proc. § 10-4B-04 (emphasis added). The government’s invocation of probable cause in its pen register application and the court’s reference to probable cause in the order do not transform a pen register/trap and trace order into a warrant. Warrants require not just a probable cause showing, but also must “describe with particularity the items to be seized [in order to ensure] that a citizen is not subjected to ‘a general, exploratory rummaging in [his personal] belongings.’” *United States v. Hurwitz*, 459 F.3d 463, 470 (4th Cir. 2006) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971)); *see also* Fed. R. Crim. P. 41 (setting out requirements for issuance of a warrant in federal courts); Md. Code Ann., Crim. Proc. § 1-203 (same, for state courts).

Warrants also involve a strict requirement of notice to the target of the search, a default requirement that the warrant be executed in the daytime hours, a time limit on execution of the warrant, and other protections. Fed. R. Crim. P. 41 (e)(2)(C)(ii), (f)(2); Md.

Code Ann., Crim. Proc. § 1-203 (a)(5)-(6). Moreover, warrants must be accompanied by a sworn affidavit based on personal knowledge of an investigating officer and setting forth the basis for probable cause. Md. Code Ann., Crim. Proc. § 1-203(a)(2)(i)(3); Fed. R. Crim. P. 41(d). The pen register application at issue here was merely signed by a police detective and the facts therein were not sworn to under oath. Because use of a stingray constitutes a search, the government must, at the very least, secure a warrant before employing such a device. The government's insertion of information in support of a finding of probable cause in its Application suggests that it understood these concerns; as such, the government should have applied for a proper search warrant. To be clear, the government will likely contend that this search was constitutional because it obtained an order from the state court judge, Hon. Barry G. Williams, under the Maryland pen register/trap and trace statute, Md. Code Ann., Cts. & Jud. Proc. § 10-4B-01, however that statute does not authorize the use of stingray technology. As a result, the evidence obtained from the use of the stingray should be suppressed, as it is "fruit of the poisonous tree." Wong Sun v. United States, 371 U.S. 471, 484 (1963).

III. THE GOVERNMENT'S APPLICATION CONTAINED MATERIAL MISREPRESENTATIONS INVALIDATING ANY PURPORTED JUDICIAL AUTHORIZATION TO USE A STINGRAY

The Fourth Amendment was "the product of [the Framers'] revulsion against" "general warrants" that provided British "customs officials blanket authority to search where they pleased for goods imported in violation of the British tax laws." *Stanford v. Texas*, 379 U.S. 476, 481-82 (1965). Stingrays inevitably interact with and collect data from the phones of innocent third parties as to whom there is no individualized suspicion, let alone probable cause. Authorization for such sweeping surveillance raises the type of concerns that animate the prohibition on general warrants. *See United States v. Leon*, 468 U.S. 897, 899 (1984) ("[A]

warrant may be so facially deficient—i.e., in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid.”); *Doe v. Broderick*, 225 F.3d 440, 453 (4th Cir. 2000) (“The expectation that one generally remains free from warrantless searches in the privacy of the home is at the heart of the Fourth Amendment, but the Supreme Court has long recognized that searches of office buildings and commercial premises in the absence of a search warrant grounded upon probable cause are unreasonable as well.”) (internal citations omitted). Furthermore, interrupting and preventing dozens or hundreds of people’s cell phone calls, including urgent and important calls, in the course of tracking a single suspect raises serious questions about the reasonableness of the search. *See United States v. Ramirez*, 523 U.S. 65, 71 (1998).

In this case, the Order purportedly authorizing use of the stingray was based on a misleading Application for a pen register/trap and trace device that breached the government’s duty of candor to the issuing judge. *See Pen Register Trap and Trace Warrant*, Attached as Exhibit VI. More specifically, the government misled the court in requesting what was titled a pen register/trap and trace order. Second, its Application contained no mention of a stingray device, much less any explanation of how such a device operates, the immense privacy implications for innocent third parties, or the fact that regular use of the stingray can disrupt phone calls nearby.

Courts recognize a pen register as a device that records the numbers dialed by a particular telephone and a trap and trace device as recording the incoming numbers to a telephone. *See Smith v. Maryland*, 442 U.S. 735, 736 & n.1 (1979); *see also* Md. Code Ann., Cts. & Jud. Proc. § 10-4B-01 (c)(1)-(d)(1). The government sought a pen register order to authorize use of a “cellular tracking device,” but Maryland’s pen register statute makes no provision for, or even mention of, a “cellular tracking device.” *See generally*, Md. Code Ann.,

Cts. & Jud. Proc. § 10-4B-01. Moreover, Maryland law expressly forbids the type of information to be retrieved under a trap and trace warrant that the Government extracted in this case.

Under federal law, pen register orders may not be used to obtain location information. *See* 47 U.S.C. § 1002(a)(2) (“[W]ith regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices . . . , such call identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number).”). Although the Maryland pen register statute does not include this limiting language, use of information collected under the state statute in a federal prosecution that would not be obtainable using the analogous federal statute raises concerns. Moreover, as of October 1, 2014, law enforcement in Maryland must obtain a search warrant before tracking the location of a cell phone. Md. Code Ann. Crim. Proc. § 1-203.1, enacted as S.B. 698, 2014 Md. Laws Ch. 191. The Maryland legislature has now clearly forbidden use of a pen register order to obtain real-time location information. And further, the Application in this case simply does not comply with the requirements set forth in Section 1-203 of the Maryland Rules of Criminal Procedure. *See* Md. Code Ann., Crim. Proc. § 1-203.1 (b)(2). Without a description from the government as to what it meant by “cellular tracking device,” it would have been impossible for the issuing judge to know that the government was in fact referring to a stingray. Even more unlikely would have been the court’s independent understanding that unlike a pen register/trap and trace device, a stingray broadcasts signals that penetrate the walls of every private home in its vicinity, and is incapable of targeting only one phone or person, but instead searches every mobile phone in range.

The role of the court in enforcing the requirements of the Fourth Amendment is key. When judges have learned that police departments are seeking to use stingray devices and understood the capabilities of those devices, they have limited the scope of orders and demanded that the government be more candid in its requests. In a recent federal investigation in New Jersey, for example, the government submitted an application for a pen register order to use a stingray that included significantly more detail than was provided in this case, even stating that: the device will “mimic[] one of Sprint’s cell towers to get the Target [phone] to connect to it;” “[b]ecause of the way the Mobile Equipment sometimes operates, its use has the potential to intermittently disrupt cellular service to a small fraction of Sprint’s wireless customers within its immediate vicinity;” and “data [will be] incidentally acquired from phones other than the Target.” Appl. at 6-8, *Appl. for Pen Register*, No. 1:14-cr-00170-CCB; Order, *Order for Pen Register*, No. 1:14-cr-00170-CCB; *United States v. Williams*, No. 13-00548 (KM) (D.N.J. 2014). Based on this description of the intrusive nature of the technology, and recognizing that a pen register order cannot authorize such an intrusion, the federal magistrate judge reviewing the application modified the government’s proposed order by hand to prohibit the government from using the stingray “in any private place or where [FBI agents] have reason to believe the Target [phone] is in a private place.” Order at 5, *Order for Pen Register*, No. 1:14-cr-00170-CCB.

More recently, a local newspaper investigation in Tacoma, Washington, revealed that police had used a stingray more than 170 times over five years, but had concealed their intent to do so from judges when seeking court orders. Once local judges learned from a reporter that they had been unwittingly authorizing stingray use, they collectively imposed a requirement that the government spell out whether it is seeking to use a stingray device in

future pen register applications.⁷ Law enforcement agencies that want to use the device must now swear in affidavits that they will not store data collected from third parties who are not targets of the investigation.⁸ Similarly, after the local newspaper in Charlotte, North Carolina, revealed that police had been using stingrays for eight years pursuant to pen register orders, but had not made their intent to do so explicit in their applications, a judge denied an application for such an order, a first for that court.⁹

Here, had the government candidly told Judge Williams that it intended to use a stingray, he could have denied the application without prejudice to a subsequent application providing further details about the technology, imposed limits on use of the device, or denied the application and invited the government to apply for a search warrant instead. A federal magistrate judge recently denied a pen register application to use a stingray on these grounds. *In re Application for an Order Authorizing Installation and Use of a Pen Register and Trap and Trace Device*, 890 F. Supp. 2d 747 (S.D. Tex. June 2, 2012). As the same magistrate judge explained in denying a statutory application for cell site records of *all* subscribers from several cell towers, an understanding of “the technology involved” is necessary to “appreciate the constitutional implications of” the government’s application, particularly where, as here, the technology entails “a very broad and invasive search affecting likely hundreds of individuals in violation of the Fourth Amendment.” *In re Application for an Order Pursuant to 18 U.S.C. § 2703(D)*, 930 F. Supp. 2d 698 (S.D. Tex. 2012).

In another case, a federal magistrate judge denied a pen register application on the ground that use of a stingray is too intrusive because of the impact on third parties. *See In re Application for an Order Authorizing Use of a Cellular Telephone Digital Analyzer*, 885 F.Supp. 197,

⁷ Id.

⁸ Id.

⁹ Fred Clasen-Kelly, *CMPD’s Cellphone Tracking Cracked High-Profile Cases*, Charlotte Observer, Nov. 22, 2014, www.charlotteobserver.com/2014/11/22/5334827/cmpds-cellphone-tracking-cracked.html.

201 (C.D. Cal. 1995) (denying statutory application to use stingray because, *inter alia*, “depending upon the effective range of the digital analyzer, telephone numbers and calls made by others than the subjects of the investigation could be inadvertently intercepted”). That stingrays obtain information about third parties “creates a serious risk that every warrant for [a stingray] will become, in effect, a general warrant,” to search persons as to whom there is no probable cause. *See CDT*, 621 F.3d at 1176.

The government here failed to provide Judge Williams with essential information about the nature and scope of the search it sought to conduct. In sum, the police’s search of 5032 Clifton Avenue home was invalid due to a misleading application. The government’s “lack of candor,” was highly consequential to Mr. Andrews’ case, and he has a right to corroborate his claims with evidentiary information from the government. *CDT*, 621 F.3d at 1170 (Kozinski, C.J., concurring).

A. The lack of candor in the government’s Application requires the court to hold a *Franks* hearing to examine the validity of the court order.

The government’s omission of information about the stingray from its Application prevented the court from exercising its constitutional oversight function and renders the Order invalid. At a minimum, Mr. Andrews is entitled to an evidentiary hearing on whether the omission of information about the cell site simulator was intentional and material. *See Franks v. Delaware*, 438 U.S. 154 (1978). A defendant seeking a *Franks* hearing based on omission of information must make a showing that “omissions were ‘*designed to mislead*, or . . . made in *reckless disregard of whether they would mislead*’ and that the omissions were material.” *United States v. Clenney*, 631 F.3d 658, 664 (4th Cir. 2011) (alteration and emphasis in original) (quoting *United States v. Colkley*, 899 F.2d 297, 301 (4th Cir.1990)). If the court finds that “inclusion [of the omitted material] in the affidavit would defeat probable cause,” *id.*, “the search warrant must be voided and the fruits of the search excluded.” *Franks*, 438 U.S. at

155.¹⁰ Although the government obtained and relied on a pen register order, not a warrant, in this case, there is no reason why the *Franker* rule should not apply. A material omission or misrepresentation to the issuing judge should void the order and result in exclusion of evidence gathered pursuant to it.

The government made serious omissions and misrepresentations with respect to its intended use of a stingray, demonstrating a reckless disregard for the truth. It completely left out any description of the type of equipment it was seeking to use; in fact, its Application makes absolutely no mention of a “stingray,” “cell site simulator” or “TMSI catcher.” Instead, on its face, the government’s Application appears to be a routine request for a pen register, which is a completely different surveillance technology with significantly lesser surveillance capabilities than a cell site simulator with none of the side effects inflicted upon innocent third parties.

The government’s omission of information about stingrays—or affirmative misrepresentation that it is instead using a “pen register” device or obtaining information from a “confidential source”—is hardly innocent. It seems clear that misrepresentations and omissions pertaining to the government’s use of stingrays are intentional. The issue is not whether the government should have followed-up on or disclosed facts not of its own making. The government cannot disclaim responsibility for knowing what device it has chosen to use.

Nor can ignorance about the technology excuse any omission. The functioning of the technology has constitutional significance. It is therefore incumbent on the government to understand the technology and disclose it to the courts. *See In re Application for an Order*

¹⁰ Courts have consistently held that “[s]uppression remains an appropriate remedy if the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth.” *Leon*, 468 U.S. at 897–98.

Pursuant to 18 U.S.C. § 2703(D), 930 F. Supp. 2d 698 (S.D. Tex. 2012) (rejecting application for so-called “cell tower dump,” i.e., all information from specified cell towers: “[I]t is problematic that neither the assistant United States Attorney nor the special agent truly understood the technology involved in the requested applications. Without such an understanding, they cannot appreciate the constitutional implications of their requests. They are essentially asking for a warrant in support of a very broad and invasive search affecting likely hundreds of individuals in violation of the Fourth Amendment.”).

In short, the Application failed to alert the issuing judge that the government intended to use a stingray, misleadingly stating it intended to use a “pen register,” and failed to provide basic information about what the technology is and how it works. The omissions were intentional and material. Mr. Andrews is therefore entitled to suppression¹¹ or a *Franks* hearing, to ensure that the government is not permitted to conduct searches pursuant to an invalid court order.

IV. This Court Should Suppress Mr. Andrews’ Statements Because it was Obtained in Violation of Article 22 of the Maryland Declaration of Rights and the Fifth Amendment to the United States Constitution

Article 22 of the Maryland Declaration of Rights provides “[t]hat no man ought to be compelled to give evidence against himself in a criminal case.” Md. Dec. of R. art. 22. Likewise, the Fifth Amendment to the Constitution of the United States provides that “No person . . . shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V. While the federal constitutional jurisprudence sets the floor for an American citizen’s constitutional protections, our State is entitled to build on that floor. Thus, Mr. Andrews asserts that his state and federal rights were violated when he was

¹¹ The Honorable Judge Charles Peters has already determined, at a minimum, that Mr. Andrews is entitled to a suppression hearing on the use of the stingray.

subjected to a custodial interrogation without the benefit of Miranda and when he was induced to give consent.

A. Mr. Andrews was Subjected to a Custodial Interrogation

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court held that individuals may not be subjected to custodial interrogations without being advised of their right to remain silent under the Fifth Amendment of the United States Constitution. *Id.* at 467-68; *see also J.D.B. v. North Carolina*, U.S. 131 S. Ct. 2394 (2011); *Whitfield v. State*, 287 Md. 124, 131 (1980). To analyze whether an individual is in custody for Miranda purposes, courts should evaluate whether under the "totality of the circumstances . . . a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson v. Keohane*, 516 U.S. 99, 112, (1995); *see also Owens v. State*, 399 Md. 388, 428 (2007); *Whitfield*, 287 Md. at 141, 411 A.2d at 425.

As the Court of Appeals explained in *Owens v. State*, 399 Md. 388 (Md. 2007), and *Whitfield v. State*, 287 Md. 124 (Md. 1980), when examining whether an individual was in custody, courts should consider, *inter alia*,

when and where it occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restraint such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness. Facts pertaining to events before the interrogation are also relevant, especially how the defendant got to the place of questioning whether he came completely on his own, in response to a police request or escorted by police [*261] officers. Finally, what happened after the interrogation whether the defendant left freely, was detained or arrested may assist the court in determining whether the defendant, as a reasonable person, would have felt free to break off the questioning.

Owens, 399 Md. at 429 (quoting *Whitfield*, 287 Md. at 141).

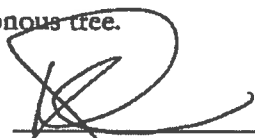
In this case, Mr. Andrews was most certainly in custody as he was arrested prior to being interrogated. While interrogating him, the officers failed to properly advise him of his Miranda rights and purposefully excluded that portion of the proceeding from the recording. As the Court of Appeals of Maryland explained in *State v. Lockett*, 413 Md. 360 (Md. 2010), "If the warnings, viewed in totality, in any way misstate the suspect's right to silence and counsel, or mislead or confuse the suspect with respect to those rights, then the warnings are constitutionally infirm, rendering any purported waiver of those rights constitutionally defective and requiring suppression of any subsequent statement." *Id* at 380. And in *Williams v. State*, 375 MD. 404 (Md. 2003), the Court of Appeals explained that "a confession that is preceded or accompanied by threats or a promise of advantage will be involuntary, notwithstanding any other factors that may suggest voluntariness, unless the State can establish that such threats or promises in no way induced the confession. *See Williams v. State*, 375 Md. 404, 430 (Md. 2003). The court reiterated this position in *Hill v. State*, 418 Md. 62, 75 (Md. 2011), explaining that the officers made any statements that would communicate the fact that a criminal defendant could "avoid criminal charges or lessen the likelihood of a successful criminal prosecution," *Hill*, 418 Md. at 79, then the statements are invalid.

In this case, the officers purposefully failed to record Mr. Andrews' advisement regarding his right to remain silent and his right to an attorney. And the officers admit that they ad-libbed these rights and paraphrased. In doing so, they misstated Mr. Andrews' rights and mischaracterized them, rendering his statement involuntary and inadmissible. Moreover, any testimony that Mr. Andrews was accurately advised of his Miranda Rights

and his right to an attorney are suspect because the advisements came from Detective Converse and the Honorable Judge Charles Peters has ruled that Detective Converse lacks credibility, and he is barred from testifying in the case at a hand. As a result, any purported testimony of his as to the propriety of the Miranda warnings is inadmissible and not credible. Therefore, Mr. Andrews' statements ought to be dismissed.

CONCLUSION

This Court should suppress all evidence obtained from 5032 Clifton Avenue because the Government intentionally withheld stingray information, and the warrant executed at the property was based on illegally seized information. The State also withheld the warrant and the order for the stingray. In addition, Mr. Andrews' confession is inadmissible as he was not properly advised of his right to remain silent and his right to an attorney. As a result, the evidence obtained from 5032 Clifton Avenue and Mr. Andrews' confession should be suppressed because they are fruit of the poisonous tree.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June 2015, a copy of the foregoing motion was hand delivered to the Office of the State's Attorney for Baltimore City, 120 E. Baltimore Street, Baltimore, MD 21202.



Deborah K. Levi

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EXHIBIT I

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

STATE OF MARYLAND,

Vs.

KERRON ANDREWS,
Defendant.

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Case No. 1114149007, -008, -009

SUPPLEMENTAL DISCOVERY REQUEST

Pursuant to Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972); and Rule 4-263(d)(6) of the Maryland Rules of Criminal Procedure, Mr. Andrews hereby requests the State to provide the following:

1. All records, notes, and documents in any form related to any and all follow-up investigation of suspect #2, as discussed in page 1 of Lotus Note dated April 30, 2014.
2. All notes and evidence, in any form, related to neighborhood canvasses conducted in this matter.
3. Any and all notes, documents, search warrants, location information and reports of any kind related to the pen register trap and trace and GPS tracking of Mr. Kerron Andrews and or phone number 443-208-2776.
4. Any and all reports, location information, and evidence, in any form, revealed from the pen register tap and trace for telephone numbers 410-830-0312 and 443-415-8960.
5. All evidence indicating how Mr. Andrews was located at 5032 Clifton Avenue.

6. All documents indicating the status of tag number 2BL 4540, registered owner, and the ownership status of the 2001 black Mercedes Benz S500, VIN number WDBNG70J11A200821, driven by Mr. Asisabar Holloway.
7. Any and all reports, of any kind, related to the search and seizure warrant executed on May 5, 2014 at 5032 Clifton Avenue, produced by Sargeant Fallon, Sargeant Felker, Detective Carvell, Detective Johnson, Detective Hollingsworth, Detective Witmer, Police Officer Green, Police Officer Jones and Detective Spinatto, including but not limited to the time and order of entry of each individual officer.
8. NCIC criminal history reports for Destiny Fields and Leonard Clark, Jr.
9. Current contact information for any and all state's witnesses in this matter.



Deborah K. Levi
Attorney for Defendant
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Baltimore, MD 21202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November 2014, a copy of the foregoing motion was hand delivered and e-mailed to the Office of the State's Attorney for Baltimore City, 120 E. Baltimore Street, Baltimore, MD 21202.

EXHIBIT II

STATE OF MARYLAND * IN THE
V. * CIRCUIT COURT
KERRON ANDREWS * FOR
CASE NO.: 114149007 * BALTIMORE CITY

* * * * *
STATE'S SUPPLEMENTAL DISCLOSURE

Now comes Marilyn Mosby, State's Attorney for Baltimore City and Katie M. O'Hara (ID #623250), Assistant State's Attorney for Baltimore City, and in accordance with Rule 4-263 (h) of the Maryland Rules of Procedure, hereby promptly supplements the State's prior disclosures with the following additional witnesses and/or information:

Attached is discovery recently provided by the State, and newly discovered evidence provided to the State. *Please note that several documents are printed on front and back.*

1. WATF Det. Spinnato: Det. Michael Spinnato is the WATF detective who was primarily responsible for the arrest of Defendant. He can be reached at 410-637-8970 (WATF Office). The State proffers that his information is the following: Det. Spinnato, with WATF, conducted a background investigation of Defendant to determine what if any information would be helpful in his apprehension. Defendant's Potter St address was identified and WATF went there on May 5, 2014 first, but Defendant was not located there. WATF did not have the Clifton Ave address as a possible location until ATT provided that information. Det. Spinnato recalls that he was in touch with Det. Haley from ATT. ATT was provided that information from Sprint in the form of GPS coordinates, Det. Spinnato received the same information either from Sprint directly, or forwarded from ATT. Det. Spinnato provided ATT with the phone number associated to Defendant from the shooting investigation and [REDACTED]. Det. Spinnato contacted Det. Raymon Lugo who confirmed that the phone number 443-208-2776 was the number Det. Lugo used to contact Defendant. Det. Spinnato recalls that ATT gave Det. Spinnato the Clifton Ave address in the afternoon/early evening on May 5, 2014. WATF then responded to the location, knocked and announced, that there was some delay in the occupants opening the door but for the most part the entry was without issue. Det. Spinnato located Defendant in the living room on the couch, asked him to stand up, handcuffed him and searched him. Det. Spinnato located the cell phone in one of Defendant's pockets (he is unsure of which pocket). Det. Spinnato and the other members of WATF then secured the location for SWD DDU to come execute a SSW. Also present from WATF were Sgt. Price, Det. Williams, Det. Glanvale, Det. White and Det. Thompson. Det. Spinnato does not have a document that addresses the order of entry into the house, as requested by Counsel, but recalls that he was the first member of BPD through the door. See typed notes from ASA O'Hara's interview with Det. Spinnato on May 15, 2015, attached hereto.
2. ATT: Attached is a list from ATT Sgt. Scott Danielczyk that indicates the ATT detectives who were working on May 5, 2014. It includes Det. John Haley. Copy of email sent from Sprint to BPD, ATT Unit, indicating the GPS coordinates associated with the target cell phone (443)208-2776. Two emails re: Sent Fax Report dated 5/5/14. ATT fax cover sheet to Sprint requesting that Sprint disable the GPS precision locations on 443-208-2776.
3. Sprint letter dated 7/1/14 including account details

4. PEN Register/Trap and Trace for 443-208-2776, authored by Det. Michael Spinnato and signed by the Honorable Barry G. Williams on May 5, 2014. Attached to same is ATT Work Order Form, authored by Det. Michael Spinnato, requesting ATT services on May 5, 2014.
5. ATT Fax, including a copy of the aforementioned Order, to Sprint on May 5, 2014 from ATT Det. Tony Clark requesting Sprint information for aforementioned cell phone number.
6. WATF 24 hour report, authored by Det. Michael Spinnato
7. Handwritten notes (Det. Kevin Carvell) 410-396-2231, 242 Font Hill Ave.
8. Lotus Notes 5/7/14, 5/8/14, 6/5/14, 6/6/14, 6/19/14, 11/24/14, 1/27/15, 1/30/15
9. Photo Array shown to Rhaiyanna Allen on 1/30/15 by Det. Matthew Pow (SWD DDU, 410-396-2231, 242 Font Hill Ave). Ms. Allen could not identify anyone.
10. Photo Array shown to Asiabar Howard on 5/4/14 by Det. Converse who indicates in the notes that Mr. Howard "looked at pictures, would not identify anyone, write anything or initial anything."
11. ECU Property receipts and List Report
12. ATT Fax cover sheet to Sprint from Det. Michael Dressel 6/27/14 requesting call detail reports 4/1/13-5/5/14, with Order from May 5, 2014.
13. Call detail reports from 4/1/13-5/5/14 for 443-208-2776, received by ATT.
14. Notes from Interview w/ Det. Spinnato
15. ATT fax cover sheet for 410-830-0312 dated 5/1/14 with attached Order
16. Cell Sites for incoming/outgoing calls re: 410-830-0312
17. Subscriber Info re: 410-830-0312
18. Verizon Cell Site Explanation Form
19. Sprint Letter dated 4/30/14 to Det. Tony Clark re: Subscriber Info 443-415-8960
20. Call detail report 443-415-8960
21. Sprint letter dated 6/11/14 re: 443-415-8960 records for 4/1/13-5/23/14

22. ATT Work Order Form re: 443-415-8960 dated 4/29/14, ATT Fax and Order



Katie M. O'Hara
Assistant State's Attorney
120 E. Baltimore Street
9th Floor
Baltimore, MD 21202
443-984-6199

I HEREBY CERTIFY that a copy of the foregoing State's Motion for Discovery, State's Disclosure and State's Procedural Motions was, this 15th day of MAY 2015

served on the Defendant
 mailed to the Defendant
 served on the Defendant's Counsel:
 emailed to the Defendant's Counsel
Attorney Deborah Levi,
Office of the Public Defender



Assistant State's Attorney

EXHIBIT III

Levi, Deborah

From: Katie OHara [KOHara@stattorney.org]
Sent: Wednesday, May 06, 2015 5:13 PM
To: Levi, Deborah
Subject: Re: Andrews

I totally understand- let's see where you lie after tomorrow. We can schedule a review then.

Yes, it is my understanding that ATT used a stingray to locate your client via his cell phone, then WATF actually arrested him. That is the paperwork I am waiting for.

Let me know when you have a better idea of your status and have a great evening.

ASA Katie M. O'Hara
Baltimore City State's Attorney's Office
443-984-6199 (o)
443-310-0453 (c)

> On May 6, 2015, at 4:57 PM, Levi, Deborah <DLevi@opd.state.md.us> wrote:

>
> Katie, thanks for your email. I just got sent to trial on an attempted murder and it doesn't look like we are going to finish motions until at least Friday afternoon. That said, we are in front of Judge Welch, so you never know if it could work out. Let me see what happens tomorrow morning with our trial and I will touch base with you in the afternoon. I need to look through his file and doublecheck on motions, and I'd love to do a file review but let me see what the rest of this week is going to look like with this trial first.

>
> Off the top of my head I think there's an identification and his statement that would be subject to motions to suppress. I am also trying to find out if there was a stingray used to locate him and there may be some suppression issues related to cell numbers.

>
> I usually brief my motions ahead of time and that I haven't gives me some reason to think I wasn't planning on running some of the motions I just mentioned but I don't want to say that right now without knowing more.

>
> Debbie
>
> Sent from my iPhone

>
> On May 6, 2015, at 4:05 PM, Katie OHara <KOHara@stattorney.org
<mailto:KOHara@stattorney.org>> wrote:

>
> Hi Debbie-

>
> Hope your week is going well. I wanted to touch base about Andrews. I wanted to see if you could give me an idea of motions that you have so that I can prep for those, and also invite you for a file review if that's something that you wanted to do. I like to make sure that although our standard discovery invites it, that in more serious cases, counsel is reminded that you are welcome to that. I am in and out of court Friday and in most of the day tomorrow and Monday.

>
> I think a good estimate is 5 days for this case- let me know if you agree, or if you disagree, what you might estimate instead.

>
> I am waiting on Det. Sponato WATF to email me a 24Hour Report that details their involvement in locating your client on Clifton Ave. He expects to email it to me tomorrow. When I receive it, I will forward it to you.

>
> If there is anything else you want to take a look at, please just let me know.

>
> Katie

>
>
>
> Information in this message is confidential and may be legally privileged. It is intended solely for the person to whom it is addressed. If you are not the intended recipient, please notify the sender, and please delete the message and any other record of it from your system immediately. Internal OPD email communications should not be forwarded outside the Agency without the original sender's permission.

EXHIBIT IV



**REGIONAL WARRANT APPREHENSION TASK FORCE
24-HOUR INCIDENT REPORT**

Date: 5 May 2014

TO: Lieutenant Brian Matulonis
Acting Commanding Officer, Escape & Apprehension Unit

FROM: Detective Michael Spinnato Seq# H043

SUPERVISOR: Sergeant Sterling Price

CC#: 148D12125

Incident / Date & Time: Shooting / 4-27-14 0214hrs

Incident Location & District: 4900 Stafford St / Southwest District

Arrest Date & Time: 5-5-14 1900hrs

Arrest Location & District: 5032 Clifton Ave / Southwest District

Warrant# (s): 2B02259343

Suspect (s): Andrews, Kerron David
M/B/5-19-91
4209 Potter St

SID#: 3400743

Victim (S): Rhaiyana Morgan, Torrey Browne, Asiabar Holloway, Raven Allen, Rain Allen

Primary Investigator: Michael Spinnato

Participants: Shooting Squad

SYNOPSIS: On May 2, 2014 your writer received warrant 2B02259343 charging Kerron Andrews with Attempted Murder. A comprehensive background check was conducted into Mr. Andrews' family, friends, and associates. On 5-5-14 Mr. Andrews was located and arrested at 5032 Clifton Ave with the assistance of ATT. Mr. Andrews was transported to SWD/DDU to be interviewed. The location was held pending a S&S by SWD/DDU.

Respectfully,
Detective Michael Spinnato

EXHIBIT V

Notes from Interview with Det. Michael Spinnato, WATF

May 15, 2015

Primary Investigator: WATF (For Kerron Andrews)

WATF: Price, Williams, Glanvale, White, Thompson

Assigned the Def's case (Nonfatal shooting squad of WATF)

Use departmental databses/crim court records to locate helpful information

WATF File: Usually keeps a file related to each case containing RAPS, background info from databases

Def's file: looked for it, cannot locate it

Sex offender registry moving to his office so files have been purged

Info would be still in databases/does not contain notes or anything that cannot be duplicated

24 hour report- I have that

Efforts to locate Def ANDREWS

Potter St address (listed as Def's home)- morning of May 5, went there, Def not there

No other addresses from research looked promising b/c of the known relationship between victim and Defendant (Victim presumed to give law enforcement known addresses)

Contacted Converse re: other info, including phone #- gets phone # 443-208-2776

Converse tells Spinnato re: Def's [REDACTED] w/ Lugo

Spinnato contacts Lugo- Lugo confirms [REDACTED] is a drug dealer in the area and the 443-208-2766 # is a good contact for him. Also confirms Potter St as known address.

Spinnato then types up DNR for 443-208-2766

J. Williams signs

True test copy faxed to ATT

Calls ATT to follow up /make sure they have it- talks to Haley (usually deals w/ Haley)

Waits for ATT to begin their investigation

Spinnato starts getting emails from Sprint or ATT with the GPS coordinates of the phone # (range of 200-1600 meter radius)

Contacting Haley by radio and cell phone re: updates

(13)

Haley suggests staging area (N. Forrest Pk and Windsor Mill Rd) gas station parking lot

ATT riding around, WATF in the parking lot waiting

WATF in minivan w/ 5 detectives

ATT in ATT car w/ at least 2 detectives, plus Haley- unsure if more

In the Clifton Ave area

Spinnato gets a radio or call from haley re: 5000 Clifton Ave, phone in this area

Drives the van to the 5000 Blk Clifton Ave

ATT continues to narrow down the location of the phone and gets to 5032 Clifton Ave based on signal strength

This is all within minutes

ATT remains on scene with WATF

Spinnato knocks on 5032

Female answers the door after a few minutes (knocked 5 times)

Announcing BPD/wearing black vest with POLICE

Introduced himself to female, why they are there, can I come in

Allowed in

Probably 5 detectives inside- ATT/WATF work together to secure rear/windows and inside

Spinnato walks through kitchen and living room is next room, walks into lv rm and Def is on couch

2 other males in the lv rm on loveseat/other side of room

Asked Def to stand up, handcuffed him, searched him and recovered phone from his pocket. Took phone, turned it off and placed it back into his pocket. (Since WATF doesn't have evidence bags, etc... unless its drugs or possible weapons, they leave it on the Def so that everything is accounted for once they get to the district) Turns phones off so that Def can't delete things/text anyone. No statements. No questions.

Rest of WATF/ATT secures the rest of the occupants (recalls 5-6 total adults/teens)

Def remains while they do that part, then Spinnato calls Converse and patrol is called to secure and hold the house for execution of SSW

Patrol arrived, they explain the circumstances and patrol held the house with other occupants, Def is transported

WATF and ATT go to SWD with Def. No statements, no questions.

Converse was at the SWD writing the SSW

Def goes to an interview room, Converse and Spinnato there, removes phone and gives to Converse to submit

End of WATF activity

EXHIBIT VI

IN THE MATTER OF AN APPLICATION * IN THE
 OF THE STATE OF MARYLAND * CIRCUIT COURT
 FOR AN ORDER AUTHORIZING THE * FOR
 INSTALLATION AND USE OF A DEVICE * BALTIMORE CITY
 KNOWN AS A PEN REGISTER / * STATE
 TRAP & TRACE * OF MARYLAND
 OVER *

443-208-2776

*
 * * * * *

APPLICATION

Your Applicant, Detective Michael Spinnato, Baltimore Police Department, pursuant to section 10-4B-03 of the Courts Article of the Code of Maryland, hereby applies for an Order authorizing the installation and use of a device known as a Pen Register \ Trap & Trace and Cellular Tracking Device to include cell site information, call detail, without geographical limits, which registers telephone numbers dialed or pulsed from or to the telephone(s) having the number(s): 443-208-2776 , a AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless; Cricket Communications, Inc; and / or any other Telecommunication service provider telephone.

In support of this application, your applicant states as follows:

Your applicant, Detective Michael Spinnato , Baltimore Police Department ("Agency"), has been engaged in an investigation of Kerron Andrews for violation of Attempted

Murder. The following information is offered in support of probable cause for the interception of real-time cell site information.

1. On 4/27/14 members of the Baltimore City Police Department investigated a Shooting that occurred at 4900 Stafford St under complaint number 148D12125
2. During the course of the investigation a suspect was developed and identified as "Kerron Andrews" M/B 5/19/1991.
3. Investigators subsequently obtained an arrest warrant for the suspect on 5/2/2014 charging him with Attempted Murder and related charges. (2B02259343,D140312104)
4. Det. Spinnato conducted a background investigation and found several possible addresses where the suspect may be living. These locations were turned up with negative results at this time.
5. Investigators were able to obtain Mr. Andrews cell phone number 443-208-2776, thru the victims cell phone records. Further investigation revealed that Mr. Andrews is a confidential informant and that his point of contact within the department is a Det. Lugo. Your writer contacted Det. Lugo who confirmed that Mr. Andrews cell phone number is 443-208-2776.
6. In order to hide from police, investigators know suspects will contact family, girlfriends, and other acquaintances to assist in their day to day covert affairs. Detective Spinnato would like to track/monitor Mr. Andrews' cell phone activity to further the investigation an assist in Mr. Andrews' apprehension.

7. Therefore, your applicant respectfully requests this court order to assist in the apprehension of this suspect. Mr. Andrews is aware of his warrant and is actively eluding law enforcement officials. Based on your affiant's training and experience, it is known that suspects typically use cellular phones until service is terminated or the phone becomes non-functional.

2. Your Applicant hereby certifies that the information likely to be obtained concerning the aforesaid individual's location will be obtained by learning the numbers, locations and subscribers of the telephone number(s) being dialed or pulsed from or to the aforesaid telephone and that such information is relevant to the ongoing criminal investigation being conducted by the Agency.

WHEREFORE, the State of Maryland respectfully requests that this Court grant an Order:

- A. Authorizing the Agency to install and use a Pen Register \ Trap & Trace and Cellular Tracking Device to include cell site information, call detail, without geographical limits upon the aforesaid telephone(s) for a period of time not to exceed sixty (60) days.
- B. Directing that the Agencies shall complete the necessary installation of the Pen Register \ Trap & Trace and Cellular Tracking Device, utilizing AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider providing service for the

above listed target phone number, facilities, technical information and equipment, if required.

- C. Directing that if requested by the agencies, AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Cellco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider, direct the target telephone number to operate according to the Global System for Mobile Communications (GSM), Code Division Multiple Access (CDMA) , or Integrated Digital Enhanced Network (iDEN) protocols as applicable.
- D. Directing that if requested by the agencies, T-Mobile and/or AT&T direct the target telephone number to operate according to the Global System for Mobile Communications (GSM) protocols.
- E. Directing that the Agencies are authorized to employ surreptitious or duplication of facilities, technical devices or equipment to accomplish the installation and use of a Pen Register \ Trap & Trace and Cellular Tracking Device, unobtrusively and with a minimum of interference to the service of the subscriber(s) of the aforesaid telephone, and shall initiate a signal to determine the location of the subject's mobile device on the service provider's network or with such other reference points as may be reasonably available, Global Position System Tracing and Tracking, Mobile Locator tools, R.T.T. (Real Time Tracking Tool), Reveal Reports, PCMD (Per Call Measurement Data) Report, Precision Locations and any

and all locations, and such provider shall initiate a signal to determine the location of the subject's mobile device on the service provider's network or with such other reference points as may be reasonably available and at such intervals and times as directed by the law enforcement agent / agencies serving the Order.

- F. Directing that there are specific and articulate facts that AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Cellco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider providing service for the above listed target phone number, shall furnish the Agencies with all information, facilities, cell site locations with sector information, any and all equipment information including (but not limited to) mobile station identification (MSID), international mobile subscriber identifier (IMSI), electronic serial number (ESN), subscriber identity module (SIM), international mobile equipment identity (IMEI) and other equipment identifying number(s), subscriber and billing information including (but not limited to) the amount of money/minutes on prepaid phones, account information including (but not limited to) customer comments, remarks, customer billing and warranty information, or any other customer contact notations and other phone number[s] on the account, call history records, and technical assistance necessary to accomplish the installation and use of a Pen Register \ Trap & Trace and Cellular Tracking Device, unobtrusively

and with a minimum of interference to the service of the subscriber(s) of the aforesaid telephone, Global Position System Tracing and Tracking, Mobile Locator tools, R.T.T. (Real Time Tracking Tool), Precision Locations and any and all locations.

- G. Directing AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider to provide twenty-four (24) hour technical support and implementation assistance.
- H. Directing AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider to provide any and all historical billing and subscriber information listed to this number and line, and / or any number(s) and line(s) that this target number has been changed to within ten (10) days prior to the implementation of this order.
- I. Directing the Agency to compensate AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider for reasonable expenses for the services, which the Company is providing.
- J. Directing AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications,

Inc; and / or any other Telecommunication service provider shall continue to provide the Agencies subscriber information of telephone numbers dialed from or to the aforesaid telephone, provided such request is made within ten (10) days of the expiration of the Order and provide up to 365 days of prior detailed call history information (to include SMS and MMS), of the aforesaid target telephone, only if requested by the Agency.

- K. Directing that Verizon of Maryland, Inc., Comcast, Cavalier, AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider shall provide the Agencies with subscriber information of published and non-published telephone numbers obtained from the aforesaid telephone, provided that the request for such information is made within ten (10) days of the expiration of the Order.
- L. Directing that AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider and its agents and employees are prohibited from disclosing to the subscriber(s) of the aforesaid telephone(s) or to any other person(s) the existence of this Application and Order, the existence of the investigation identified in the Application or the fact that the Pen Register \ Trap & Trace and Cellular Tracking Device to include cell site information, call detail, without geographical limits, is being installed and used upon the aforesaid

telephone(s).

- M. Directing that the Order authorizing the installation and use of the devices apply not only to the presently assigned number(s) and line(s), but to any subsequent number(s), line(s) or service(s) assigned to replace the original number(s) or line(s); and that any change to the service(s), additional services, leased or purchased equipment, enhanced and/or special or custom feature(s), changing of mobile station identification (MSID), international mobile subscriber identifier (IMSI), electronic serial number (ESN), subscriber identity module (SIM), or international mobile equipment identity (IMEI) be disclosed to the Applicants.
- N. Directing that during the effective period of the Order, AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider, shall not discontinue, suspend, or change the provision of service to the above-described telephone(s) for any reason, including but not limited to suspicion of fraud, or non-payment of outstanding bills without first providing notice to the Agencies, via the Baltimore Police Department at 443-984-7266 and without further providing the Agencies with the opportunity to assume the cost of any unpaid services provided by AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication

service provider. Directing the Agencies shall pay the cost of any unpaid services provided by AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider with respect to the above-described telephone(s), from the date ... AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider notifies the Agencies of its intention to discontinue, suspend or change the provision of service(s) to the phone(s), up until the date that the Agencies advises AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider that it will not or will no longer assume and pay the cost of continued unpaid service(s).

- O. Directing AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider will not sell or transfer the telephone number(s) or facility(ies) without prior notice to the Agency.
- P. Directing that AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider provide the

Agency with identical services to those received by the subscriber(s), including all communications transmitted over the telephone(s) that the subscriber(s) receive(s), regardless of which other communications common carrier'(s) facilities are involved.

- Q. Directing that AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider provide the Agency with all call data content, transactional/call, data/call detail and cell site data simultaneous with all communications over 443-208-2776.
- R. Directing that this Application and Order be sealed.

Respectfully submitted,



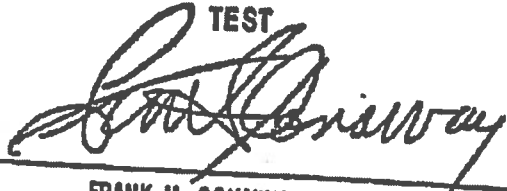
Detective Michael Spinnato,
Baltimore Police Department

Upon a finding that probable cause exists based upon the information supplied in this application, that the said individual is using the cellular phone number of 443-208-2776 for criminal activity and that the application will lead to evidence of the crime(s) under the investigation.

Sworn and Subscribed to before me this 5 of May, 2014.
Judge Barry G. Williams
Circuit Court for Baltimore City
Signature appears on the original document

Judge
Circuit Court for Baltimore City

TRUE COPY
TEST



FRANK M. CONAWAY, CLERK





ADVANCED TECHNICAL TEAM

Office 443-984-7266 Fax 443-984-7260

Work Order Form

DETECTIVE INFO	
Name	Mike Spinnato
Contact #	443-881-0948
Sequence #	H-043

CASE INFO	
Target #	443-208-2776
CC #	148D12125
Lotus #	14V084

Services Requested on 5/5/2014 (1 target # per form):

<input checked="" type="checkbox"/>	Subscriber Information
<input checked="" type="checkbox"/>	Toll records from: <u>4-5-14</u> to: <u>5-5-14</u>
<input checked="" type="checkbox"/>	Pen Register <input checked="" type="checkbox"/> 30 days <input checked="" type="checkbox"/> 60 days
<input checked="" type="checkbox"/>	Mobile Locator / Precision GPS (Sprint / AT&T / T-Mobile only)
<input checked="" type="checkbox"/>	Forward GPS to: <u>H043</u> (Only gov't addresses)
<input checked="" type="checkbox"/>	My supervisor is <u>Sgt Sterling</u> and is aware of my request. <u>Price</u>

Notes (Brief synopsis of case and why you need the above services):

Shooting Investigation 148D12125 Please Share Hits! H043

Kerron Andrews 5-19-91
4209 Potter St
938 Wampler Ln Westminster, MD

Vehicles: N/A



ADVANCED TECHNICAL TEAM
Baltimore City Police Department
242 W. 29th Street
Baltimore, MD 21211
443-984-7263
Fax: 443-984-7260

To: Sprint From: Det. Tony Clark
Fax #: 816-600-3100 # Pages: 8
Date: 5/5/14 Main #: 855-599-2467

Message:

- Target # 443-208-2776
- Pen Register: Install Disconnect
- Please email billing and subscriber information
 - Please email call detail records
with cell site information from: 4/5/14 to: PRESENT
 - Please enable GPS Precision Locations and email
 - Please disable GPS Precision Locations
 - If an equipment change (new ESN) has been made after
please do not implement surveillance.
 - To supplement GPS tracking please upload the MSID to the L-site.

**All information can be emailed to the following email addresses:
celltrack@baltimorepolice.org & celltrack@baltimore-police.org or upload to the L-site**

Thanks

This message is intended only for the individual or entity designated above. You are hereby notified that any dissemination, copying, use of, or reliance upon the information contained in and transmitted with this facsimile by or to anyone other than the recipient designated above by the sender is unauthorized and strictly prohibited.

Dr. Anthony Batts
COMMISSIONER

Stephanie Rawlings-Blake
MAYOR

(4)

IN THE MATTER OF AN APPLICATION	*	IN THE
OF THE STATE OF MARYLAND	*	CIRCUIT COURT
FOR AN ORDER AUTHORIZING THE	*	FOR
INSTALLATION AND USE OF A DEVICE	*	BALTIMORE CITY
KNOWN AS A PEN REGISTER /	*	STATE
TRAP & TRACE	*	OF MARYLAND
OVER 443-208-2776	*	

* * * * *

ORDER

Upon the foregoing Application of the State of Maryland for an Order authorizing the use of a device, known as a Pen Register \ Trap & Trace and Cellular Tracking Device to include cell site information, call detail, without geographical limits, the Court finds that probable cause exists and that the applicant has certified that the information likely to be obtained by the use of the above listed device(s) is relevant to an ongoing criminal investigation, To wit: Attempted Murder

It is this 5 day of May, 2014

ORDERED, pursuant to Section 10-4B-04 of the Courts and Judicial Proceedings Article of the Maryland Code, that as part of a criminal investigation of Kerron Andrews and others as yet unknown, the Baltimore Police Department (BPD), Drug Enforcement Agency (DEA), Federal Bureau of Investigations (FBI), United States Marshals Service (USMS), United States Secret Service (USSS), Immigration Customs Enforcement (ICE), Alcohol Tobacco and Firearms (ATF), Sytech, or any other designated law enforcement agency (hereinafter referred to

as "Agencies") are authorized to use for a period of sixty (60) days from the date of installation, a Pen Register \ Trap & Trace and Cellular Tracking Device to include cell site information, call detail, without geographical limits, which shall be installed and used within the jurisdiction of this Court, upon the telephone(s) having the number(s): 443-208-2776, a AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider, telephone; and it is further

ORDERED, that the Agencies shall complete the necessary installation of the Pen Register \ Trap & Trace and Cellular Tracking Device, utilizing AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider providing service for the above listed target phone number, facilities, technical information and equipment, if required. The Agencies are authorized to employ surreptitious or duplication of facilities, technical devices or equipment to accomplish the installation and use of a Pen Register \ Trap & Trace and Cellular Tracking Device, unobtrusively and with a minimum of interference to the service of the subscriber(s) of the aforesaid telephone, and shall initiate a signal to determine the location of the subject's mobile device on the service provider's network or with such other reference points as may be reasonably available, Global Position System Tracing and Tracking, Mobile Locator tools, R.T.T. (Real Time Tracking Tool), Precision Locations and any and all locations, and such provider shall initiate a signal to determine the location of the subject's mobile device on the service provider's network or with such other reference points as may be reasonably available and at such intervals and times as directed by the law enforcement agent / agencies serving this order; and it is further.

ORDERED, that if requested by the agencies, AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider, direct the target telephone number to operate according to the Global System for Mobile Communications (GSM), Code Division Multiple Access (CDMA) , or Integrated Digital Enhanced Network (IDEN) protocols as applicable; and it is further

ORDERED, that based upon specific and articulate facts, AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider providing service for the above listed target phone number, shall furnish the Agencies with all information, facilities, cell site locations with sector information, any and all equipment information including (but not limited to) mobile station identification (MSID), international mobile subscriber identifier (IMSI), electronic serial number (ESN), subscriber identity module (SIM), international mobile equipment identity (IMEI) and other equipment identifying number(s), subscriber and billing information including (but not limited to) the amount of money/minutes on prepaid phones, account information including (but not limited to) customer comments, remarks, customer billing and warranty information, or any other customer contact notations and other phone number[s] on the account, call history records (to include SMS and MMS) , and technical assistance necessary to accomplish the installation and use of a Pen Register \ Trap & Trace and Cellular Tracking Device, unobtrusively and with a minimum of interference to the service of the subscriber(s) of the aforesaid telephone, Global Position System Tracing and Tracking, Mobile Locator tools, R.T.T. (Real Time Tracking Tool), PCMD (Per Call Measurement Data)

Report, Reveal Reports, Precision Locations and any and all locations; and it is further

ORDERED, AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communication, Inc; and / or any other Telecommunication service provider shall provide twenty-four(24) hour technical support and implementation assistance; and it is further

ORDERED, AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider shall provide any and all historical billing and subscriber information listed to this number and line, and / or any number(s) and line(s) that this target number has been changed to within one hundred and eighty (180) days prior to the implementation of this order; and it is further

ORDERED, that the Agencies shall compensate AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider for reasonable expenses for services which the Company is providing; and it is further

ORDERED, AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider shall continue to provide the Agencies subscriber information of telephone numbers dialed from or to the aforesaid telephone, provided such request is made within ten (10) days of the expiration of the Order and provide up to 24 months of prior detailed call history information (including SMS), to include cell site information of the aforesaid target telephone,

Historical Global Position System Tracing and Tracking, Mobile Locator tools, R.T.T. (Real Time Tracking Tool), Reveal Report , PCMD (Per Call Measurement Data), Precision Locations and any and all locations R.T.T. (Real Time Tracking Tool), Reveal Report , PCMD (Per Call Measurement Data), Precision Locations and any and all locations only if requested by the Agency; and it is further

ORDERED, that Verizon of Maryland, Inc., Comcast, Cavalier, AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider shall provide the Agencies with subscriber information of published and non-published telephone numbers obtained from the aforesaid telephone, provided that the request for such information is made within ten (10) days of the expiration of this Order; and it is further

ORDERED, that AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider and its agents and employees are prohibited from disclosing to the subscriber(s) of the aforesaid telephone(s) or to any other person(s) the existence of this Application and Order, the existence of the investigation identified in the Application or the fact that the Pen Register \ Trap & Trace and Cellular Tracking Device to include cell site information, call detail, without geographical limits, is being installed and used upon the aforesaid telephone(s); and it is further

ORDERED, that the Order authorizing the installation and use of the devices apply not only to the presently assigned number(s) and line(s), but to any subsequent number(s), line(s) or

service(s) assigned to replace the original number(s) or line(s); and that any change to the service(s), additional services, leased or purchased equipment, enhanced and/or special or custom feature(s), changing of mobile station identification (MSID), international mobile subscriber identifier (IMSI), electronic serial number (ESN), subscriber identity module (SIM), or international mobile equipment identity (IMEI) be disclosed to the Applicants; and it is further

ORDERED that during the effective period of this Order, AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider, shall not discontinue, suspend, or change the provision of service to the above-described telephone(s) for any reason, including but not limited to suspicion of fraud, or non-payment of outstanding bills without first providing notice to the Agencies, via the Baltimore Police Department at 443-984-7266 and without further providing the Agencies with the opportunity to assume the cost of any unpaid services provided by AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider. The Agencies shall pay the cost of any unpaid services provided by AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider with respect to the above-described telephone(s), from the date AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider notifies the Agencies of its intention to discontinue, suspend or change the provision of service(s) to the phone(s), up until the date that the Agencies advises AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and /

or any other Telecommunication service provider that it will not or will no longer assume and pay the cost of continued unpaid service(s); and AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider will not sell or transfer the telephone number(s) or facility(ies) without prior notice to the Agency; and it is further

ORDERED that AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider provide the Agency with identical services to those received by the subscriber(s), including all communications transmitted over the telephone(s) that the subscriber(s) receive(s), regardless of which other communications common carrier'(s) facilities are involved; and it is further

ORDERED that AT&T; Sprint / Nextel; Virgin Mobile; T-Mobile; Celco Partnership, DBA Verizon Wireless, Verizon; Cricket Communications, Inc; and / or any other Telecommunication service provider provide the Agency with all call data content, transactional/call, data/call detail and cell site data simultaneous with all communications over 443-208-2776 ; and it is further

ORDERED, that this Order and Application be sealed until further Order of the court.

Judge Barry G. Williams
Circuit Court for Baltimore City
Signature appears on the original document

JUDGE

CIRCUIT COURT FOR BALTIMORE CITY

Signed 5 day of May, 2014



TRUE COPY

TEST

Frank M. Conaway

FRANK M. CONAWAY, CLERK

CPD

RECEIVED FOR RECORD
CIRCUIT COURT FOR BALTIMORE CITY

IN THE CIRCUIT COURT FOR BALTIMORE CITY

2017 JUL 27 PM 3: 21

2017 JUL 27 PM 3: 14

STATE OF MARYLAND

CRIMINAL DIVISION

State's Attorney's Office

vs.

CHARLES SMITH

CASE NO. 116243008

Defendant

*** **

DEFENDANT'S MOTION FOR SUBPOENA FOR TANGIBLE EVIDENCE UNDER RULES 4-263 AND 4-264 AND REQUEST FOR A HEARING

The above-named defendant, Charles Smith, by and through undersigned counsel, John Markus and Deborah Katz Levi, respectfully requests that this Honorable Court issue a Subpoena for Tangible Evidence for the production of the Baltimore City Police Department's (BPD) complete Internal Affairs Division's (IAD) files pertaining to Officers Maurice Ward (H456); Evodio Hendrix (I695); Wayne Jenkins (H383); and Marcus Taylor (I725). These files are likely to contain evidence that may be usable at trial, as well as impeachment evidence, which the State is required to disclose under the Fifth and Sixth Amendments to the United States Constitution, Article 21 of Maryland's Declaration of Rights, Brady v. Maryland, 373 U.S. 83 (1963), Kyles v. Whitley, 514 U.S. 419 (1995), Fields v. State, 432 Md. 650 (Md. 2013), and Maryland Rules 4-263 and 4-264. Mr. Smith further requests that these records be provided to defense counsel for an in-camera inspection.

STATEMENT OF FACTS & PROCEDURAL HISTORY

On July 21, 2016, Officer Evodio Hendrix wrote a sworn statement of probable cause alleging that he, Maurice Ward, Wayne Jenkins, and Marcus Taylor heard gunshots and responded to the scene of an alleged crime. Officer Hendrix also wrote that he observed the defendant with a weapon, that he chased the defendant, and that he subsequently arrested Mr. Smith. See Hendrix Sworn Statement of Probable Cause, Attached as Exhibit 1. On

July 22, 2016, Detective Curtis McMillion drafted a sworn application for statement of charges in reference to the exact same shooting. Detective McMillan stated that “Baltimore Police Detectives who was [sic.] in the area heard the gunshots and responded to the location and observed [the defendant] with the gun in hand eventually apprehending him behind 2320 Wilkens Ave. Detectives also found the gun and clothing Mr. Smith was wearing.” McMillion Sworn Application for Statement of Charges at 2, Attached as Exhibit 2. While Detective McMillan declined to name the officers in his sworn statement, it is undisputed that the unidentified officers are Maurice Ward, Wayne Jenkins, Evodio Hendrix, and Marcus Taylor. The case relating to Officer Hendrix Application for Statement of Probable Cause was subsequently dismissed, and the State is proceeding on the document authored by Detective McMillion, which fails to name the observing officers and the arresting officer.

After initiating and providing information relevant to Mr. Smith’s prosecution, officers Ward, Hendrix, Jenkins, and Taylor were indicted in the Federal District Court of Maryland for their involvement in a major racketeering conspiracy. The indictment incorporates conduct that dates back to 2015, alleging that the “officers stole money, property and narcotics from victims, some of whom had not committed crimes; swore out false affidavits; submitted false official incident reports; and engaged in large-scale time and attendance fraud.” Seven Baltimore City Police Officers Arrested for Abusing Power in Federal Racketeering Conspiracy, U.S. Attorney’s Office, District of Maryland, Wednesday March 1, 2017, available at <https://www.justice.gov/usao-md/pr/seven-baltimore-city-police-officers-arrested-abusing-power-federal-racketeering>, attached as Exhibit 3. On July 21, Ward and Hendrix entered guilty pleas to robbing people, filing false police reports, and participating in a massive overtime theft scheme, all while acting as law enforcement officers

for the Baltimore Police Department. See Tim Prudente, Two Baltimore detectives plead guilty to racketeering charges, face up to nine years in prison, Balt. Sun, July 21, 2017, Attached as Exhibit 4. The conduct spans a large period of time and without exaggeration, shocks the conscience. Undoubtedly, during the time period that the indictment covers, citizens who were victims of these extensive crimes complained about them to the Baltimore Police Department's Internal Affairs Division, and it is highly likely that these officers were investigated.

Because these officers were the first to respond to the scene and allegedly observed Mr. Smith with a gun, authored the original statement of probable cause, and were concealed in the second, they are likely to be called as witnesses at trial. Thus, the State has an obligation to provide all exculpatory and impeachment evidence, including that evidence that is contained in their IAD files.

While the State is likely to argue that these officers IAD files are not relevant because the State does not now intend to call any of these officers as a witness, this argument is mislaid. The indicted officers, two of whom have now pleaded guilty to crimes involving robbery, filing false police reports, and theft, were the first to arrive on the scene, including in the first statement of probable cause, and the only ones to allegedly observe the defendant with a weapon. Whether they carried out their duties to properly secure the scene and whether they actually observed what is in the sworn statement of charges is certainly key evidence for use at trial. The State cannot escape its obligations under Brady, the Constitution, and the Maryland Rules by simply claiming that they are not calling these individuals as witnesses. The officers were part of the investigating team, and the defense is entitled to call them, and more importantly, impeach them. Thus, the State has an obligation to provide this Brady material in advance of trial. As a result, and based on the following

additional argument, this Court ought to grant Mr. Smith's Motion for Subpoena for Tangible Evidence for the complete IAD files of officers Jenkins, Ward, Hendrix, and Taylor.

ARGUMENT

I. MR. SMITH IS ENTITLED TO ACCESS AND REVIEW THE OFFICERS IAD FILES BECAUSE THOSE FILES ARE LIKELY TO REVEAL USABLE EVIDENCE; THEY CONTAIN BRADY MATERIAL; AND DEFENSE COUNSEL IS IN THE BEST POSITION TO DETERMINE RELEVANCY

As the Court of Appeals explained in Fields v. State, 432 Md. 650 (Md. 2013), the analysis regarding whether criminal defendants are entitled to access a law enforcement officer's IAD file is a multi-step process. First, the reviewing court must determine whether the IAD files are likely to reveal evidence that may be usable at trial. Id. at 668. During this phase of the analysis, the Fields court admonished that "a court . . . may deny a defendant any form of access to the material only if nothing in it, 'in anyone's imagination, [could] properly be used in defense or lead to the discovery of usable evidence.'" Id. at 670 (quoting Zaal v. State, 326 Md. 54, 88 (1992)). After making that determination, the court must then rule on the manner of inspection, in other words, whether the court should review the records in camera, or whether the defendant should participate in that inspection. Id.

As will be explained further below, Mr. Smith should be afforded access to Officer Jenkins, Hendrix, Ward and Taylor's IAD files because those officers are key witness for the State¹ in Mr. Smith's trial and their IAD files are likely to reveal usable evidence. Moreover,

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¹ While the government may try to avoid disclosure by claiming that it will not call these officers as witnesses, the criminal prosecution arises out of their observations and they were the first to respond to and secure or fail to secure the scene. Thus they may very well be called as a defense witness to challenge the investigation. Their names were curiously also withheld from the sworn statement of probable cause, which goes to the veracity of the

as the defense counsel is in the best position to judge the importance of the impeachment material at issue, this Court should allow counsel for Mr. Smith the opportunity to view the records.

A. MR. SMITH IS ENTITLED TO ACCESS OFFICER WARD, JENKINS, HENDRIX, AND TAYLOR'S IAD FILES BECAUSE THOSE FILES ARE LIKELY TO LEAD TO USABLE EVIDENCE AT TRIAL

Mr. Smith ought to be afforded access to officers Ward, Hendrix, Jenkins, and Taylor's complete IAD files because they are likely to lead to the discovery of usable evidence. In Fields, the Honorable Mary Ellen Barbera, writing for a unanimous Court of Appeals, held that the need to inspect IAD records should be interpreted broadly: "[O]nly when the records are not even arguably relevant and usable should the court deny the defendant total access to the records." Id. at 668. Put another way, Judge Barbera explained that the trial court should only exclude IAD material from the parties' review when it "could not, in anyone's imagination, properly be used in defense or lead to discovery of usable evidence." Id. at 668-69. The Fields case is remarkable in that the court reversed the defendants' Baltimore City Circuit Court murder convictions, after a multi-week jury trial, on the sole basis that the trial court had refused to order production of the two detectives' IAD records, who had testified at trial. Given that the officers' IAD files are likely to lead to the discovery of usable evidence, and they are likely to be called to testify in Mr. Smith's case, this Court should order production of the IAD files to avoid any unnecessary miscarriage of justice.

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individuals who failed to disclose their names. As a result, any evidence that goes to their veracity and their history of misconduct is exculpatory and discoverable.

The Fields holding, while expansive and impressive, is not new. In fact, the Fields Court merely expanded on Maryland law, settled decades ago in Zaal v. State, 326 Md. 54 (Md. 1992). In that case, the Court of Appeals explained that a defendant should be allowed access to confidential records when there is “a reasonable possibility that review of the records would result in discovery of usable evidence.” Id. at 81. The Zaal decision was based on the understanding that a criminal defendant’s right to confront his accusers and to prepare a defense trumps any purported confidentiality of personnel records. A “criminal defendant may be entitled to discovery of confidential personnel records where the defendant’s right to confront and cross-examine the witnesses against him outweighs the interests of the party holding the protection of the confidential records.” Id. at 81-87. Even if the officers’ IAD files are considered confidential records within the Maryland Public Information Act, a fact which the above-named defendant does not concede, a record deemed confidential does not “guarantee [its] insulation from. . . disclosure.” Id.; see also Fields, 432 Md. at 678, (McDonald, J., concurring) (“If other law requires disclosure of a record, the record is disclosable under the [M]PIA even if it falls within one of the [M]PIA’s many categories of exceptions to disclosure. . . . the compulsory process of the subpoena itself might constitute ‘other law’ that overrides the [Maryland Public Information Act] exception”).

Where a defendant demonstrates a “need to inspect,” or, in other words, “a reasonable possibility that review of the records would result in discovery of usable evidence,” the court then must, at a minimum, review the records in-camera. The court can choose to view the records alone, in the presence of counsel, or it could allow counsel for both parties to review the records themselves as officers of the court. Id. at 667. Given the

Court of Appeals' expansive directive in Fields, this is certainly a case in which there is a need to inspect the records because they are likely to reveal usable evidence.

More specifically, the records will shed light on the officers' prior criminal conduct including robbery, filing false police reports, and theft. Certainly, this conduct is evidence that, in everyone's imagination, could be used at trial, or used to gather evidence that may be used at trial. Moreover, the evidence will reveal prior bad act evidence that the State should be required, without request, to provide. As the Fields court stated, the "Maryland Rules authorize trial courts to allow cross-examination of a witness about a prior bad act, not resulting in conviction, that relates to the witness's credibility, so long as the cross-examiner can establish 'a reasonable factual basis' for the inquiry." Fields v. State, 432 Md. 650, 671 (Md. 2013); see also Sessoms v. State, 357 Md. 274 (2000); Md. R. Evid. 5-608(b).

B. DEFENSE COUNSEL, AS THE ADVOCATE, SHOULD BE ABLE TO EXAMINE THE CONTESTED FILES

After establishing a need to inspect, as the defendant has done in this case, the court must then determine the manner of inspection. When deciding how to proceed with the in-camera inspection, "the court should take into account, among other factors, 'the degree of sensitivity of the material to be inspected; the strength of the showing of the 'need to inspect'; whether the information sought is readily identifiable; considerations of judicial economy, etc.'" Fields, 435 Md. at 668 (quoting Zaal, 326 Md. at 87). "A strong need to inspect weighs in favor of allowing counsel to participate in the review as officers of the court." Id.

In this case, the defendant has carried his burden of showing a need to access the IAD files. Thus, the only question that remains is how this court will choose to conduct the inspection. Because there is a strong need to inspect in the present cases, defendant's

attorney requests to either participate with the court's in-camera inspection, or to be able to view the materials independently as an officer of the court.

First, the information is not particularly sensitive because it relates to the officers' conduct as police officers, not in their private life. Other than reporting conduct which may be unbecoming of a law enforcement officer, there is nothing remarkably sensitive about the facts at issue. Moreover, it has all been aired in federal indictments, extensive media coverage and court proceedings, including the change of plea hearings.

Second, there is a strong need to inspect because the information contained in the documents goes directly to the veracity and performance of key witnesses. While the police department has an interest in protecting confidential records, "that confidentiality interest must yield . . . to the defendant's interest in having an opportunity to mount a defense and confront the witnesses against him." *Id.* at 672 ("[W]hen due process concerns have been involved, the confidentiality of [internal investigation] records" yields to those concerns); see also *Davis v. Alaska*, 415 U.S. 308, 320 (1974); *Robinson v. State*, 298 Md. 193, 308 (1983). Officers Jenkins, Ward, Taylor, and Hendrix are likely to provide key testimony at Mr. Smith's trial, and the information contained in their IAD file goes directly to their credibility. See *Fields*, 432 Md. at 670-71. In addition to the due process and confrontation rights that require inspection, the prosecution is obligated to make the records available to the defendant under *Brady v. Maryland*, 373 U.S. 83 (1963), and Maryland Rule 4-263(d)(b).

Third, the files the defendants seek are concise and readily available. There is no implication that allowing counsel to participate in an in camera review would impose a strain on judicial economy or an undue burden on the prosecution to produce the files.

Finally, the most compelling reason defense counsel should to be permitted to participate in the records review is that there is no other advocate for the defendant like his

own counsel. As the Fields Court noted, a judge, while scrupulous, is not an advocate for the defendant, and may overlook or fail to conclude that certain aspects of the file would be instrumental to the defense:

the court must approach its task cognizant of the fact that it is not an advocate and, in most instances, will not, and, indeed, cannot be expected, to discern all the nuances or subtleties which may render an innocuous bit of information relevant to the defense. Whether there is impeaching information in a file is not easily determined. Indeed, whether information is impeachment evidence, or may otherwise be characterized, often depends upon the circumstances, including context, and, to a large extent, the perception of the person interpreting it. Consequently, well-prepared defense counsel--one who has spoken extensively with his client, developed a strategy for the trial and is familiar, thoroughly, with the State's case--would then be able to bring the advocate's eye to the review of the records, thus, protecting the interest of the defendant in ensuring that relevant, usable exculpatory or impeachment evidence is discovered. . . . Moreover, by having the benefit of counsel's input on the critical questions of relevance and admissibility, the court is enabled to rule more responsibly.

Fields, 435 Md. at 668 (citations and internal quotation marks omitted, alteration in original).

As a result, this Court ought to order Officers Ward, Hendrix, Taylor and Jenkins' entire IAD files to be produced for undersigned counsel to review, because the information is not particularly sensitive, there is a strong need to inspect, the files are readily available, and the defense attorney is in the best position to determine the importance of the information because they are the only individual aware of the intricacies and nuances of the defendant's case.

C. MR. SMITH IS ALSO ENTITLED TO THE OFFICER IAD RECORDS UNDER THE DUE PROCESS CLAUSE, BRADY V. MARYLAND, AND MARYLAND RULE 4-263

In Brady v. Maryland, 373 U.S. 83 (1963), the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request

violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” Brady, 373 U.S. at 87. The Supreme Court has made clear that the duty under Brady exists irrespective of whether the accused has made a request, see United States v. Agurs, 427 U.S. 97, 103-04 (1976); it extends to impeachment evidence, as there is no distinction between impeachment and exculpatory evidence; see Kyles v. Whitley, 514 U.S. 419, 433 (1995); Williams v. State, 416 Md. 670, 695 (2010); and it extends even to evidence known *only* to police investigators. Whitley 514 U.S. 419, 437-38 (1995) (“the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.”); accord Youngblood v. West Virginia, 547 U.S. 867, 869–870 (2006); Williams v. State, 416 Md. 670, 695 (2010); Robinson v. State, 354 Md. 287, 309 (1999) (holding that IAD records are in the prosecutions constructive possession).

The obligations under Brady are not to be taken lightly; rather they are the columns atop which a fair and just criminal process is built. Taking heed, Maryland codified the State’s Brady obligations in Rule 4-263 of the Maryland Rules, requiring disclosure to the defendant, without request, of “[a]ll material or information in any form, whether or not admissible, that tends to impeach a State’s witness” Md. Rule 4-263(d)(6). This obligation extends to information that is not in the possession of, or even known to, the State’s Attorney: “The obligations of the State’s Attorney . . . extend to material or information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney’s staff, or any other person who either reports regularly to the attorney’s office or has reported to the attorney’s office in regard to the particular case.” Md. Rule 4-263(c)(2); see also Robinson, 354 Md. at 309. As the Supreme Court clearly explained, “the individual prosecutor has a duty to learn of any favorable

evidence known to the others acting on the government's behalf in the case, including the police.” Kyles v. Whitley, 514 U.S. 419, 437 (1995), and the prosecution simply cannot contend that they are unaware of the Brady material related to this officer. The State also cannot shirk its responsibility by claiming it is not calling the individuals as witnesses. Their observations form the basis for the prosecution, and their truthfulness is now at issue.

Moreover, our Court of Appeals has determined that IAD records are deemed in the possession of the prosecution, regardless of whether the prosecutor even knows those records exist:

In [Maryland], each major police department has an IAD division. Consequently, because that division is a part of the police, its records are in the possession of the police. And if the police is an arm of the prosecution, it follows that the records are also constructively in the possession of the prosecution; records in the possession of the police are not rendered not in possession simply because they are made confidential and are not, on that account, shared with, or readily available to, the prosecution.

Robinson, 354 Md. at 309.

In the instant case, the defendant is affirmatively seeking evidence that would tend to impeach the State's key witnesses. The records at issue likely deal with the officer's pattern of unlawful conduct and reference prior bad acts that are fair game once this officer testifies. Without question, the defense is entitled to access those records, and it is not sufficient for the State to hide behind confidentiality of police personnel records. Additionally, the State's Attorney's Office is ill-equipped to make the determination as to the relevance of these records on behalf of the defendants. As the Court of Appeals explained in Fields, the defense attorney is best situated to determine the relevance or importance of information in the IAD files, as the defense attorney is the “one who has spoken extensively with h[is] client, developed a strategy for the trial and is familiar, thoroughly, with the State's case—

[who] would then be able to bring the advocate's eye to the review of the records.” Fields v. State, 432 Md. 650, 668 (2013) (internal quotation marks omitted). Defense counsel should be able to review the file and determine what evidence would be usable at trial, or, at a minimum, this court should review the records and make that decision.

Finally, the State cannot escape disclosure by hiding behind the Maryland Public Information Act, especially when no MPIA request is at issue. The defendant seeks these records through his attorney’s subpoena power, not through a general request as a member of the public. As the United States District Court explained in Mezu v. Morgan State University, 269 F.R.D. 565 (D. Md. 2010), the MPIA must give way to applicable discovery rules in litigation. More specifically, the Mezu Court held that the MPIA applies to the general public seeking records, it is not a tool that litigants can use to supplant the applicable laws of discovery. See id. at 576.

In reaching its conclusion, the Mezu court explained that “[t]he MPIA is modeled on the Federal Freedom of Information Act (FOIA), 5 U.S.C. § 552, and therefore decisions interpreting the federal statute are persuasive in interpreting counterpart provisions of the MPIA.” Id. (citations and internal quotation marks omitted). The Mezu Court then turned to a Maryland Court of Appeals decision, which likewise explained that “the purpose of the Maryland PIA is ‘virtually identical’ to that of the Federal FOIA and . . . , except where there may be some relevant differences in two statutes, we may, and should, look to persuasive interpretations of the Federal Act.” Id. (internal quotation marks omitted) (citing Stromberg Metal Works, Inc. v. Univ. of Md., 395 Md. 120, 909 A.2d 663, 668 n. 2 (2006)). The Mezu Court then pointedly explained that the FOIA “does not displace discovery in domestic civil litigation under the Federal Rules of Civil Procedure.” Id. (citing In re Application of Mohamed Al Fayed, 36 F.Supp.2d 694, 695 (D.Md.1999); Baldrige v. Shapiro, 455 U.S. 345,

360 n. 14 (1982) (NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 143 n. 10 (1975)). Instead, the Court explained, “FOIA exceptions only . . . permit the withholding . . . information from the public generally.” Id. But, in litigation, the court explained, “the need of a litigant for the material must be taken into account, and may require disclosure where the FOIA itself would not.” Id. Applying the same logic the records at issue in Mezu, the court held that the records were discoverable pursuant to the rules of discovery. See id. The same is certainly true here.


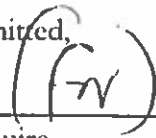
In summary, the prosecution possesses Brady material as to Officers Ward, Taylor, Hendrix and Jenkins, and the State is required to provide those documents. As a result, Mr. Smith respectfully moves this Court to order production of the officers’ IAD files, or issue a subpoena for tangible evidence for the same, as it is clear that those documents are likely to yield evidence that is usable at trial.

CONCLUSION

Having met his burden of demonstrating a need to inspect the IAD files, Mr. Smith respectfully requests that this Honorable Court permit defense counsel to inspect the IAD files of Officers Ward, Taylor, Hendrix, and Jenkins.

A hearing is hereby requested on Defendant’s Motion for Subpoena for Tangible Evidence.

Respectfully submitted,

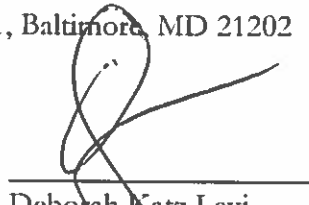
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of July, 2017, a copy of the foregoing Defendant's Motion for Subpoena for Tangible Evidence Under Rule 4-263 and 4-264 and Request for a Hearing was hand delivered to Steph Havelon, Assistant State's Attorney for the Office of the State's Attorney for Baltimore City, 120 E. Baltimore Street, 9th Floor, Baltimore, Maryland 21202, and e-mailed to Alexa Curley, Esquire, at Alexa.Curley@BaltimoreCity.gov, and mailed to: Office of Legal Affairs Baltimore City Department of Law, 100 N. Holliday Street, Suite 101, Baltimore, MD 21202



Deborah Katz Levi
Attorney for Defendant

EXHIBIT 1



DISTRICT COURT OF MARYLAND FOR

(City / County)

LOCATED AT (COURT ADDRESS)
 5800 WABASH AVE, BALTIMORE MARYLAND
 21215 UNITED STATES 410-878-8000

DC Case #: 2B02329700

RELATED CASES:



COMPLAINANT				DEFENDANT			
NAME (LAST, FIRST, MI.)		TITLE		NAME (LAST, FIRST, MI.)		TITLE	
HENDRIX EVODIO		C OFC.		SMITH CHARLES			
AGENCY	SUB-AGENCY	ID. NO. (POLICE)		MAFIS NAME (LAST, FIRST, MI.)			
AD	5937	1695		SMITH, CHARLES JAMES JR			
WORK TELEPHONE		HOME TELEPHONE		ID. NO.	RACE	SEX	HT
(410) 396-2626				369280	B	M	6/5
ADDRESS		APT. NO.		WT	D.O.B. (MM/DD/YY)		
BPD - ORGANIZED CRIME DIVISION 601 E FAYETTE S				175	09/08/1966		
CITY		STATE	ZIP CODE	CC/OCA	HAIR	EYES	OTHER DESCRIPTION
BALTIMORE		MD	21202		BRO	BRO	
				DRIVER'S LICENSE #			STATE
				WORK TELEPHONE		HOME TELEPHONE	
						(443) 919-5858	
				ADDRESS			APT. NO.
				579 SCOTT ST			
				CITY	STATE	ZIP CODE	
				BALTIMORE	MD	21230	

- DOMESTIC VIOLENCE HATE CRIME
 VULNERABLE ADULT ABUSE CHILD ABUSE

STATEMENT OF PROBABLE CAUSE

ARREST ON TRAFFIC / NATURAL RESOURCES / MASS TRANSIT CITATIONS / CRIMINAL CHARGES / MUNICIPAL ORDINANCES / PUBLIC LOCAL LAWS

THE DEFENDANT HAS BEEN ARRESTED ON THE FOLLOWING VIOLATION OR VIOLATIONS. MAKE A PLAIN CONCISE AND DESCRIPTIVE STATEMENT OF ESSENTIAL FACTS CONSTITUTING THE OFFENSE CHARGED.

CC# 8-1607-09074 SOUTHWESTERN DISTRICT PROPERTY RECOVERED 1. SMITH & WESSON
 40 CAL HANDGUN SER# HTN 5299 2. MAGAZINE ON 7-21-16 AT APPROX. 2234 HRS THIS
 DETECTIVE ALONG WITH DETECTIVE TAYLOR (1725), WARD (11456) AND SGT JENKINS (H383) WERE
 PATROLLING IN THE 600 BLK OF BENTALOU ST (IN AN UNMARKED VEHICLE) FOR ILLEGAL ACTIVITY.
 THIS AREA IS KNOWN TO BE A HIGH CRIME/VIOLENT AREA. WHILE DRIVING IN THE 600 BLK OF
 BENTALOU ST THESE DETECTIVES HEARD DISCHARGING COMING FROM THE AREA OF THE 2300 BLK OF
 WILKENS AVE. THESE DETECTIVES THEN DROVE TO THE 2300 BLK OF WILKENS AVE WHERE I OBSERVED
 AN UNKNOWN MALE (LATER IDENTIFIED AS RODNEY THOMAS B/M DOB 3-20-73) RUN INTO THE MIDDLE
 OF THE STREET OF THE 2300 BLK OF WILKENS AVE AND FALL TO THE GROUND SUFFERING FROM GUN
 SHOT WOUNDS TO THE R HAND, R FOREARM, R SHOULDER, R BICEPT AND R THIGH. I THEN OBSERVED
 AN UNKNOWN MALE (LATER IDENTIFIED AS CHARLES SMITH JR. B/M DOB 9-8-66) FLEE FROM THE

X CONTINUED ON ATTACHED SHEET (FORM DC/CR 4A)

PROBABLE CAUSE CHARGES # 11

LACK OF PROBABLE CAUSE CHARGES # 0

STATE'S ATTORNEY

I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE MATTERS AND FACTS SET FORTH IN THE FOREGOING DOCUMENT ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF

DATE: _____ ARRESTING OFFICER: [Signature]

AGENCY: AD SUB-AGENCY: 5937 ID NO: 1695

I HAVE REVIEWED THE STATEMENT OF CHARGES AND HAVE DETERMINED THAT THERE IS PROBABLE CAUSE TO DETAIN THE DEFENDANT

THERE IS NOT PROBABLE CAUSE TO DETAIN THE DEFENDANT AND I HAVE ACCORDINGLY RELEASED HIM ON HIS OWN RECOGNIZANCE.

DATE: 07/22/2016 JUDICIAL OFFICER: [Signature] COMMISSIONER ID NO: 1368



166105090955



BIN1608776BC

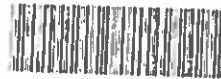


DISTRICT COURT OF MARYLAND FOR _____

DC Case : 2B02329700

(City/County)

LOCATED AT (COURT ADDRESS)
5800 WABASH AVE, BALTIMORE MARYLAND 21215
UNITED STATES 410-878-8000



DEFENDANT'S NAME (LAST, FIRST, MI)
SMITH, CHARLES

MAFIS NAME
SMITH, CHARLES JAMES JR

STATEMENT OF PROBABLE CAUSE (CONTINUED)

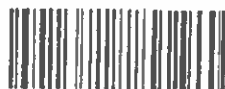
ARREST ON TRAFFIC/NATURAL RESOURCES/MASS TRANSIT CITATIONS/CRIMINAL CHARGES/MUNICIPAL ORDINANCES/PUBLIC LOCAL LAWS

SCENE WITH WHAT I OBSERVED TO BE A BLACK HANDGUN IN HIS HAND. I THEN EXITED OUR VEHICLE TO PERSUE CHARLES SMITH JR. ON FOOT BEHIND THE BUILDING OF 2320 WILKENS AVE. I THEN OBSERVED CHARLES SMITH JR. DROP THE HANDGUN (SMITH & WESSON 40 CAL HANDGUN SER# HTN 5299), TAKE HIS HAT OFF AND HIS SHIRT OFF. I THEN OBSERVED CHARLES SMITH JR. RUN INTO THE BUSHES AND ATTEMPT TO CLIMB THE FENCE LEADING INTO THE CATHERINE STREET PARK. I THEN GRABBED CHARLES SMITH JR OFF THE FENCE THEN TAYLOR AND MYSELF PLACED CHARLES SMITH JR. INTO CUSTODY. MEDIC 8 RESPONDED TO THE LOCATION AND TOOK RODNEY THOMAS TO SHOCK TRAUMA. CRIME LAB TECH 5844 GOUGH RESPONDED TO THE CRIME SCENE PROCESSED AND SUBMITTED THE ABOVE LISTED PROPERTY. SHOOTING DETECTIVE MCMILLIAN H977 RESPONDED TO THE LOCATION. THE CASE IS BEING INVOLVED AS A SHOOTING AND THE INVESTIGATION IS ONGOING AT THIS TIME. A CHECK THROUGH THE MARYLAND GUN CENTER IS REVEALED THAT CHARLES SMITH JR IS PROHIBITED FROM OWNING/POSSESSING A HANDGUN DUE TO: 1.ASSAULT 2ND DEGREE BALTIMORE CITY CIRCUIT DATE 12-1-04 CASE#204173046 2.ASSAULT 2ND DEGREE BALTIMORE CITY CIRCUIT DATE 12-1-04 CASE#104173042 ALL EVENTS OCCURRED IN BALTIMORE CITY, BALTIMORE MD

CONTINUED ON ATTACHED SHEET (FORM DC/CR 4A)

STATE'S ATTORNEY

I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE MATTERS AND FACTS SET FORTH IN THE FOREGOING DOCUMENT ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF		
DATE	ARRESTING OFFICER	
AGENCY	SUB-AGENCY	ID NO
AD	5937	1695



166105090955



BIN1602776BC

REQUEST FOR WITNESS SUMMONS

07/22/2016 8:42 AM EDT

TO THE DISTRICT COURT:

PLEASE SUMMONS THE FOLLOWING WITNESSES IN THE CASE OF: 166 105 090 955

DEFENDANTS NAME: SMITH, CHARLES

CENTRAL COMPLAINT NUMBER: 8160709074

NAME: TAYLOR OFC, MARCUS (SEQ ID NUM: 1725) (OBSERVING OFFICER)
ADDRESS: BPD - ORGANIZED CRIME DIVISION 601 E FAYETTE ST
CITY, STATE, ZIP: BALTIMORE, MARYLAND 21202 UNITED STATES
WORK PHONE: 410-396-2626
HOME PHONE:

NAME: WARD OFC, MAURICE (SEQ ID NUM: 11456) (OBSERVING OFFICER)
ADDRESS: BPD - ORGANIZED CRIME DIVISION 601 E FAYETTE ST
CITY, STATE, ZIP: BALTIMORE, MARYLAND 21202 UNITED STATES
WORK PHONE: 410-396-2626
HOME PHONE:

NAME: JENKINS OFC, WAYNE (SEQ ID NUM: 11383) (OBSERVING OFFICER)
ADDRESS: BPD - ORGANIZED CRIME DIVISION 601 E FAYETTE ST
CITY, STATE, ZIP: BALTIMORE, MARYLAND 21202 UNITED STATES
WORK PHONE: 410-396-2626
HOME PHONE:

NAME: HENDRIX OFC, EVODIO (SEQ ID NUM: 1695) (COMPLAINANT)
ADDRESS: BPD - ORGANIZED CRIME DIVISION 601 E FAYETTE ST
CITY, STATE, ZIP: BALTIMORE, MARYLAND 21202 UNITED STATES
WORK PHONE: 410-396-2626
HOME PHONE:

REQUESTED BY: WHITE, KIMBERLY

STATE'S ATTORNEY

EXHIBIT 2



DISTRICT COURT OF MARYLAND FOR Baltimore City

LOCATED AT (COURT ADDRESS)
1400 E. North Ave.
Baltimore, Md 21213



DC Case : 1B02330861

RELATED CASES:
(City/County)

COMPLAINANT DEFENDANT

Detective Curtis McMillion
Printed Name
242 W. 29th St.
Number and Street Address
Baltimore, Md 21211
City, State, and Zip Code
AD, 5920, H977
Agency, sub-agency, and I D #

Charles James Smith
Printed Name
519 Scott St.
Number and Street Address
Baltimore, Md 21230
City, State, and Zip Code
CC# 8-160709074

DEFENDANT'S DESCRIPTION: Driver's License# Sex M Race B Ht 6'5" Wt 160
Hair Eyes Complexion Other D.O.B 09/08/1966 ID S.I.D.#369280

APPLICATION FOR STATEMENT OF CHARGES

Page 1 of 2

I, the undersigned, apply for statement of charges and a summons or warrant which may lead to the arrest of the
above named Defendant because on or about 21 July 2016 at 2300 block Wilkens Ave. Baltimore, Md
did use a handgun to shoot Rodney Thomas, the above named Defendant

On 21 July 2016 at approximately
2234hrs, P/O Tonin (J337-8C32) responded to the 2300 block of Wilkens Ave. for a report of a shooting. Upon
arrival P/O Tonin observed the victim, identified as Rodney Thomas (B/M/03-07-79) laying in the westbound lane
suffering from what appeared to be multiple gunshot wounds to the body. Baltimore City Fire Department, Medic # 8
responded and transported Mr. Thomas to University of Maryland Shock Trauma Center for further medical treatment.

(Continued on attached pages) (DC/CR 1A)

I solemnly affirm under the penalties of perjury that the contents of this Application are true to the best of my knowledge,
information and belief.

22 July 16
Date

Officer's Signature

22 July 16
Date

Applicant's Signature

Subscribed and sworn to before me this 22nd day of July 2016
Time: 9:05 P M Judge/Commissioner ID 1356

I understand that a charging document will be issued and that I must appear for trial on
at 7:22-16, when notified by the Clerk, at the Court location shown at the top of this form.

Applicant's Signature

- I have advised applicant of shielding right. Applicant declines shielding.
I declined to issue a charging document because of lack of probable cause.


7-22-16
Date

Commissioner ID 1350

Tr.# 161001535564



LOCATED AT (COURT ADDRESS)
1400 East North Ave.
Baltimore, MD 21213-1400

DC Case : 1B02330861


DEFENDANT'S NAME (LAST, FIRST, M.I.)
Smith, Charles

APPLICATION FOR STATEMENT OF CHARGES (CONTINUED) Page 2 of 2

Mr. Thomas was admitted and is currently in the hospital in critical condition suffering from gunshot wounds to the right hand, forearm, bicep, shoulder, and thigh. All proper notifications were made and I, Detective C. McMillion assumed command of this investigation.

Investigation revealed Mr. Thomas and Mr. Smith was in the rear alley, even side of the 2300 block of Wilkens Ave. when Mr. Smith produced a handgun and began shooting Mr. Thomas multiple times chasing him out the alley to the front of the 2300 block of Wilkens Ave. were Mr. Thomas eventually fell and was located. Baltimore Police Detectives who was in the area heard the gunshots and responded to the location and observed Mr. Smith with the gun in hand eventually apprehending him behind 2320 Wilkens Ave. Detectives also found the gun and clothing Mr. Smith was wearing. Video footage of this incident was also obtained showing Mr. Smith chasing and shooting Mr. Thomas.

Witnesses who observed Mr. Smith with the handgun and who apprehended him gave statements that were digitally recorded and will remain anonymous at this time. However they will be made available for all future court proceedings.

All events occurred in Baltimore City, State of Maryland.

22 July 16
Date

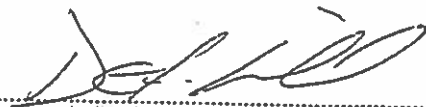

Applicant's Signature

EXHIBIT 3



THE UNITED STATES ATTORNEY'S OFFICE
DISTRICT *of* MARYLAND

[U.S. Attorneys](#) » [District of Maryland](#) » [News](#)

Department of Justice

U.S. Attorney's Office

District of Maryland

FOR IMMEDIATE RELEASE

Wednesday, March 1, 2017

Seven Baltimore City Police Officers Arrested for Abusing Power in Federal Racketeering Conspiracy

Officers Allegedly Robbed Victims, Filed False Affidavits and Made Fraudulent Overtime Claims; One Officer Also Charged in Separate Six-Defendant Drug Conspiracy Indictment

"Criminals Who Work in Police Agencies Unfairly Tarnish Honorable Officers"

Baltimore, Maryland – Federal agents arrested seven Baltimore City Police Department (BPD) officers today for a racketeering conspiracy and racketeering offenses, including robbery, extortion, and overtime fraud. The indictment was returned on February 23, 2017, and unsealed today following the execution of arrest and search warrants. One of the officers also was charged in a separate drug conspiracy indictment, also unsealed today.

The indictments were announced by Maryland U.S. Attorney Rod J. Rosenstein; Special Agent in Charge Gordon B. Johnson of the Federal Bureau of Investigation, Baltimore Field Office; Assistant Special Agent in Charge Don A. Hibbert of the Drug Enforcement Administration, Baltimore District Office; and Commissioner Kevin Davis of the Baltimore Police Department.

"This is not about aggressive policing, it is about a criminal conspiracy," said U.S. Attorney Rod J. Rosenstein. "Prosecuting criminals who work in police agencies is essential both to protect victims and to support the many honorable officers whose reputations they unfairly tarnish."

"As evidenced by these indictments the FBI will continue to make rooting out corruption at all levels one of its top criminal priorities," said Special Agent in Charge Gordon B. Johnson, FBI Baltimore Field Office. "Coupled with strong leadership by Commissioner Davis and his department, this investigation has dismantled a group of police officers who were besmirching the good name of the Baltimore City Police Department."

"The police officers charged today with crimes that erode trust with our community have disgraced the Baltimore Police Department and our profession," said Baltimore Police Commissioner Kevin Davis. "We will not shy away from accountability, as our community and the men and women who serve our City every day with pride and integrity deserve nothing less. Our investigative partnership with the FBI will continue as we strive to improve. Reform isn't always a pretty thing to watch unfold, but it's necessary in our journey toward a police department our City deserves."

DEFENDANTS

The officers charged in the racketeering indictment are:

Detective Momodu Bondeva Kenton Gondo, a/k/a GMoney and Mike, age 34, of Owings Mills, Maryland;
Detective Evodio Calles Hendrix, age 32, of Randallstown, Maryland;
Detective Daniel Thomas Hersl, age 47, of Joppa, Maryland;
Sergeant Wayne Earl Jenkins, age 36, of Middle River, Maryland;
Detective Jemell Lamar Rayam, age 36, of Owings Mills;
Detective Marcus Roosevelt Taylor, age 30, of Glen Burnie; and
Detective Maurice Kilpatrick Ward, age 36, of Middle River.

A separate indictment alleges that Detective Gondo joined a drug-dealing conspiracy. In addition to Gondo, the other indictment charges:

Antonio Shropshire, a/k/a Brill, B, and Tony, age 31, of Baltimore;
Omari Thomas, a/k/a Lil' Bril, Lil B, and Chewy, age 25, of Middle River;
Antoine Washington, a/k/a Twan, age 27, of Baltimore;
Alexander Campbell, a/k/a Munch, age 28, of Baltimore; and
Glen Kyle Wells, a/k/a Lou, and Kyle, age 31, of Baltimore.

RACKETEERING INDICTMENT

The racketeering indictment alleges that the police officers stole money, property and narcotics from victims, some of whom had not committed crimes; swore out false affidavits; submitted false official incident reports; and engaged in large-scale time and attendance fraud.

Count One, racketeering conspiracy, alleges robbery and extortion violations committed by the defendants in 2015 and 2016 when they were officers in the police department's Gun Trace Task Force, a specialized unit created to investigate firearms crimes.

Count Two, a substantive racketeering charge, alleges those crimes as well as several incidents of robbery and extortion committed by five of the seven defendants beginning in 2015, before they joined the task force. Four of the defendants previously worked together in another police unit; a fifth defendant was working in a separate unit during the earlier incidents.

In some cases, there was no evidence of criminal conduct by the victims; the officers stole money that had been earned lawfully. In other instances, narcotics and firearms were recovered from arrestees. In several instances, the defendants did not file any police reports. The amounts stolen ranged from \$200 to \$200,000.

According to the indictment, the defendants schemed to steal money, property, and narcotics by detaining victims, entering residences, conducting traffic stops, and swearing out false search warrant affidavits. In addition, the defendants allegedly prepared and submitted false official incident and arrest reports, reports of property seized from arrestees, and charging documents. The false reports concealed the fact that the officers had stolen money, property and narcotics from individuals.

The indictment alleges that the defendants obstructed law enforcement by alerting each other about potential investigations of their criminal conduct, coaching one another to give false testimony to investigators from the Internal Investigations Division of the BPD, and turning off their body cameras to avoid recording encounters with civilians. Finally, the indictment alleges that the defendants defrauded the BPD and the State of Maryland by submitting false time and attendance records in order to obtain salary and overtime payments for times when the defendants did not work.

For example, according to the indictment, on July 8, 2016, Rayam submitted an affidavit for a search warrant which falsely stated that he, Jenkins and Gondo had conducted a full day of surveillance at the residence of two victims. Later that day, Rayam, Gondo and Hersl conducted a traffic stop of the victims during which Rayam allegedly stole \$3,400 in cash. Rayam, Gondo and Hersl then transported the victims to a BPD off-site facility. In a telephone call, Jenkins told Gondo that he would meet them at the facility and that they should introduce Jenkins as the U.S. Attorney. When Jenkins arrived, he told one of the victims that he was a federal officer. Jenkins and Rayam asked the victim if he had any money in his residence, and the victim said he had \$70,000 in cash. Jenkins, Rayam, Gondo and Hersl then transported the victims back to their home. In the master bedroom closet, the officers located two heat sealed bundles – one containing \$50,000 and the other containing \$20,000 in \$100 bills. Jenkins, Rayam, Gondo and Hersl stole the \$20,000 bundle. Gondo and Rayam later argued about how to divide the stolen money. On July 11, 2016, Gondo deposited \$8,000 in cash into his checking account.

Three days after the robbery, on July 11, 2016, Jenkins went on vacation with his family in Myrtle Beach, South Carolina, staying until July 16, 2016. The indictment alleges that Jenkins falsely claimed he worked overtime on five of the six days he was on vacation. That same week, Gondo called Rayam and said that working for the BPD was “easy money” and that “one hour can be eight hours,” referring to working for one hour and then claiming eight hours on official time and attendance records.

In another episode alleged in the Indictment, on September 7, 2016, Rayam described to Gondo how he had told Jenkins that he only “taxed” a detainee a “little bit,” referring to stealing some but not all of the detainee's drug proceeds. Rayam said that they had not arrested the victim, so he “won't say nothing.” Rayam told Gondo that he had to give Wayne Jenkins \$100 of the money stolen from the victim. The victim was not charged.

DRUG INDICTMENT

In a separate seven-count indictment, Gondo, Shropshire, Thomas, Washington, Campbell and Wells are charged with conspiracy to distribute and possess with intent to distribute heroin as part of the Shropshire drug trafficking organization (DTO). Washington is charged with possession with intent to distribute and distribution of heroin resulting in death; Shropshire, Gondo, and Campbell are charged with possession with intent to distribute heroin; and Shropshire is also charged with possession with intent to distribute heroin and cocaine. According to the indictment, the conspirators primarily distributed heroin near the Alameda Shopping Center in Baltimore.

In one telephone call, Detective Gondo allegedly said, "I sell drugs." In addition to selling heroin, Gondo provided sensitive law enforcement information to other conspirators in order to help the DTO and protect his co-conspirators. For example, Gondo helped Shropshire get rid of a GPS tracking device that had been placed on his vehicle by DEA. Gondo also advised Wells about law enforcement operations in order to protect Wells from being arrested.

CONCLUSION

Anyone who believes they may have information about these cases is urged to call 1-800-CALL FBI (1-800-225-5324).

The seven defendants charged in the racketeering conspiracy each face a maximum sentence of 20 years in prison for the conspiracy and for racketeering. The defendants are expected to have an initial appearance in U.S. District Court in Baltimore later today.

Shropshire, Washington, and Campbell each face a mandatory minimum of 10 years and up to life in prison for conspiracy to distribute at least one kilogram of heroin. Gondo, Wells and Thomas each face a mandatory five years and up to 40 years in prison for conspiracy to distribute at least 100 grams of heroin. Washington faces a maximum penalty of 20 years in prison for distribution of heroin resulting in death. Shropshire, Gondo, and Campbell also face a maximum penalty of 20 years in prison for possession with intent to distribute heroin and cocaine.

An indictment is not a finding of guilt. An individual charged by indictment is presumed innocent unless and until proven guilty at some later criminal proceedings.

United States Attorney Rod J. Rosenstein commended the FBI and Baltimore Police Department for their work in both investigations, and the DEA for its work in the drug investigation. U.S. Attorney Rosenstein also recognized the Baltimore County Police Department and Harford County Sheriff's Office for their assistance in the racketeering case. Mr. Rosenstein thanked Assistant U.S. Attorneys Leo J. Wise and Derek E. Hines, who are prosecuting these Organized Crime Drug Enforcement Task Force cases.

Topic(s):

Drug Trafficking
Public Corruption

Component(s):
USAO - Maryland

Updated March 1, 2017

EXHIBIT 4

Two Baltimore detectives plead guilty to racketeering charges, face up to nine years in prison

Two Baltimore detectives plead guilty to racketeering charges, face up to nine years in prison



By **Tim Prudente**
The Baltimore Sun

JULY 21, 2017, 2:50 PM

Baltimore Police Detectives Evodio Hendrix and Maurice Ward admitted Friday that they robbed people in custody, billed for overtime hours they didn't work and forged reports to cover their tracks — all part of a conspiracy stretching back at least to March 2015.

The two veteran officers pleaded guilty to racketeering during separate hearings in U.S. District Court in Baltimore. They face seven to nine years in prison under sentencing guidelines, though the judge could choose to impose the maximum 20 years.

Both men will be sentenced in February.

Prosecutors detailed the extent of the conspiracy, saying the detectives robbed people they encountered on the streets, broke into the home of one man to steal \$20,000 each, and while vacationing billed the department for overtime.

“Is it true?” U.S. District Court Judge James Bredar asked.

“Yes, sir,” said Hendrix, 32, of Randallstown.

The 36-year-old Ward, of Middle River, came next before the judge.

“If we had a trial on this case, Mr. Ward, could the government prove those facts?” the judge asked.

“Yes,” Ward answered.

The detectives initially pleaded not guilty when they were indicted in February along with the five other members of the Police Department’s Gun Trace Task Force — the entirety of the unit. The elite plainclothes task force was deployed to interrupt Baltimore’s illegal gun trade.

Fallout continues from the indictment. Prosecutors have dropped criminal charges against dozens of people whose cases hinged on the word of the seven accused officers. The indictments also led Police Commissioner Kevin Davis to end plainclothes policing in Baltimore, saying the style encouraged officers to cut corners.

Ward resigned from the department in April; Hendrix resigned in June. A spokesman for the Police Department declined to comment Friday. The police union did not return messages seeking comment.

Federal marshals escorted Hendrix into the courtroom Friday and unlocked handcuffs around his wrists. He wore a gray jumpsuit with “HCDC” stamped on the back. He has been detained without bail in a Howard County detention center.

During the 45-minute hearing, he spoke little, answering the judge with “Yes, sir.”

Later, the marshals led Ward into the courtroom and removed his handcuffs. He wore jeans and a black hooded sweatshirt, and stood with his hands clasped behind his back.

Ward also said little beyond “Yes, sir.”

With their brief answers, however, both men admitted to a pattern of robbery and overtime fraud.

The officers stopped a suspected drug dealer in March of last year, seized drugs and cash from him but also his house key. While the man was arrested, they went into his home and stole \$200,000 from his safe and a \$4,000 Breitling wristwatch. Hendrix and Ward each walked away with about \$20,000, they admitted in court.

Three months later, Hendrix and Ward searched a home and stole \$2,000 from a shoebox in the bedroom and \$15,000 hidden inside a boot without reporting the money.

In August, they stole \$1,700 from a man during a traffic stop and shared the money without reporting it.

The entire task force carried out a scheme to defraud the Police Department for overtime hours they didn't work, said Leo Wise, the federal prosecutor. When someone on the task force made an arrest, all the members would claim they helped, even if they were off duty.

"This degree of coordination was necessary in order to conceal from the BPD the overbilling," Wise told the court.

In July 2016, Hendrix and Ward submitted for overtime claiming they worked 12 hours overnight. Both men admitted Friday to being home at the time.

Ward submitted for overtime while on vacation in Myrtle Beach, S.C.. Both Ward and Hendrix were paid for working shifts while vacationing in the Dominican Republic.

Ward earned a salary of nearly \$73,000 and made an additional \$62,000 in overtime during the 2016 fiscal year, according to court records. Hendrix earned a salary of about \$69,400 and made about \$52,000 in overtime during the same period.

Friday brought the first hearings for the indicted officers to change their pleas.

The others indicted are Wayne Jenkins, 37; Daniel Hersl, 48; Marcus Taylor, 30; Momodu Gondo, 34; and Jemell Rayam, 36. All pleaded not guilty, but Gondo and Rayam are due back in court in the fall for rearraignment hearings and are expected to change their pleas.

Jenkins, Hersl and Taylor have trials scheduled for January. The three face additional robbery charges and a maximum sentence of life in prison.

All seven were ordered held until trial after judges decided they were a risk to public safety.

Two civilians have also been indicted in connection with the case, charged with impersonating police officers to commit an armed robbery while a detective from the gun unit served as a lookout. Thomas

Finnegan, 38, of Easton, Pa., and David Rahim, 41, of Baltimore, are charged with conspiracy and robbery. Both men were ordered held until trial.

Ward left the courtroom in handcuffs, speaking to no one.

Hendrix's wife arrived at the end of his hearing; he called out to her.

They have been married 12 years with five young children at home, she said. She declined to say more.

"I love you," Hendrix called out, as the marshals led him away.

"I love you, too," she answered.

tprudente@baltsun.com

twitter.com/Tim_Prudente

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This article is related to: Theft

IN CASE YOU MISSED IT

2016 SALARY DATABASE

Search The Sun's database to find state employee salaries from calendar year 2016.

IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND

*

vs.

*

CHARLES SMITH

*

CASE NO. 116243008

Defendant

*

*** **

ORDER

Upon review of the foregoing Defendant's Motion for Subpoena for Tangible Evidence Under Rules 4-263 and 4-264 and Request for a Hearing, it is this ____ day of _____, 20__,

HEREBY ORDERED that a hearing is scheduled for the ____ day of _____ 20__;

OR in lieu of a hearing;

____ The State is ORDERED to provide defense counsel with the complete IAD files for Officers Ward, Jenkins, Taylor and Hendrix; or

____ A subpoena for tangible evidence for the officers entire IAD files will be hereby issued by this Honorable Court, for production to and inspection by counsel for Mr. Smith.

JUDGE

APD

RECEIVED FOR RECORD
CIRCUIT COURT FOR
BALTIMORE CITY

IN THE CIRCUIT COURT FOR BALTIMORE CITY

2017 SEP 27 PM 4: 30

2017 SEP 27 PM 4: 06

STATE OF MARYLAND

vs.

State's Attorney's
Office

CRIMINAL DIVISION

CHARLES SMITH

CASE NO. 116243008

Defendant

*** **

**MOTION TO COMPEL--SUPPLEMENT TO DEFENDANT'S MOTION FOR
SUBPOENA FOR TANGIBLE EVIDENCE UNDER RULES 4-263 AND 4-264 AND
REQUEST FOR A HEARING**

The above-named defendant, Charles Smith, by and through undersigned counsel, Deborah Katz Levi and John Markus, hereby supplements his previously filed Motion for Subpoena for Tangible Evidence, with a request for this Honorable Court to issue a Subpoena for Tangible Evidence for the production of the Baltimore City Police Department's (BPD) complete Internal Affairs Division's (IAD) files pertaining to Officers Maurice Ward (H456); Evodio Hendrix (I695); Wayne Jenkins (H383); and Marcus Taylor (I725), or to compel the State to do the same.

In support of his motion, Mr. Smith incorporates all arguments set forth in his previously filed Motion for Subpoena for Tangible Evidence Under Rules 4-263 and 4-264, and asserts the following additional information:

1. On July 27, 2017, defense counsel filed Defendant's Motion for Subpoena for Tangible Evidence Under Maryland Rules 4-263 and 4-264 and Request for a Hearing (the "Original Motion"), with this Honorable Court.
2. Mr. Smith served the State and the BPD with the Original Motion.
3. In the Original Motion, defense counsel requested the complete IAD files pertaining to Officers Ward, Hendrix, Jenkins, and Taylor, via a motion for subpoena for tangible evidence pursuant to Maryland Rules 4-263 and 4-264.

4. The State did not file a response.
5. In opposition to the Original Motion, the BPD suggested that the correct method to seek the above-named officers' IAD records is via a motion to compel pursuant to Maryland Rule 4-263.¹
6. Although defense counsel does not concede that a motion to compel instead of a motion for subpoena for tangible evidence is the only method to access the officers IAD records, defense counsel is filing this Motion to Compel for the purposes of completeness.
7. Thus, Mr. Smith now files this motion requesting this Honorable Court to either issue a Subpoena for Tangible Evidence for the production of the complete IAD files pertaining to Officers Maurice Ward (H456); Evodio Hendrix (I695); Wayne Jenkins (H383); and Marcus Taylor (I725), or to compel the State to produce the same.
8. Additionally, Mr. Smith certifies that all efforts to obtain the records short of a motion to compel have been exhausted because, as a matter of policy, the Baltimore City State's Attorney's Office refuses to disclose any IAD records absent a court order. Therefore, defense counsel maintains that any further good faith efforts, absent a court order, would be futile. Moreover, the State asserts that it is not calling the aforementioned officers as witnesses, and repeatedly argues that in that circumstance, it is not obligated to provide exculpatory evidence pursuant to rule 4-263. See, State v. Troy Kelliam, 117143010, argued September 12, 2017, part 13, Baltimore City Circuit Court; State v. Jeffery White, 116315006, argued August 28-29, 2017, part 15, Baltimore City Circuit Court.

¹ The BPD has filed this same substantive response in multiple cases, argued in front of the Honorable John S. Nugent over the last several months at which the State and the BPD were both present. See State v. Troy Kelliam; 117143010, argued Sept. 12, 2017; and State v. Antona Turner, 117034007, argued July 28, 2017. This Court has previously rejected the BPD's argument, and ordered the State to produce IAD files, notwithstanding the lack of a motion to compel. Nonetheless, in an abundance of caution, Mr. Smith files this motion to compel.

CONCLUSION

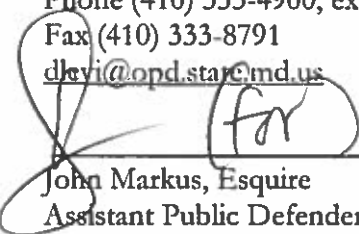
Having met his burden of demonstrating a need to inspect the IAD files, Mr. Smith respectfully requests that this Honorable Court either issue a Subpoena for Tangible Evidence for the production of the complete IAD files pertaining to Officers Maurice Ward (H456); Evodio Hendrix (I695); Wayne Jenkins (H383); and Marcus Taylor (I725), or compel the State to produce the same.

A hearing is hereby scheduled for September 29, 2017, on Defendant's Motion for Subpoena for Tangible Evidence.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of September, 2017, a copy of the foregoing Motion to Compel--Supplement to Defendant's Motion for Subpoena for Tangible Evidence Under Rules 4-263 and 4-264 was hand-delivered to Natalie Hynum, Assistant State's Attorney for the

Office of the State's Attorney for Baltimore City, 120 E. Baltimore Street, 9th Floor, Baltimore, Maryland 21202, and e-mailed to Alexa Curley, Esquire, at Alexa.Curley@BaltimoreCity.gov, and mailed to: Office of Legal Affairs Baltimore City Department of Law, 100 N. Holliday Street, Suite 101, Baltimore, MD 21202



Deborah Katz Levi
Attorney for Defendant

IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND

*

vs.

*

CHARLES SMITH

*

CASE NO. 116243008

Defendant

*

*** **

ORDER

Upon review of the foregoing Defendant's Motion to Compel—Supplement to Defendant's Motion for Subpoena for Tangible Evidence Under Maryland Rules 4-263 and 4-264., it is this ____ day of _____, 20__,

HEREBY ORDERED that a hearing is scheduled for the ____ day of _____ 20__;

OR in lieu of a hearing;

____ The State is ORDERED to provide defense counsel with the complete IAD files for Officers Maurice Ward (H456); Evodio Hendrix (I695); Wayne Jenkins (H383); and Marcus Taylor (I725); or

____ A subpoena for tangible evidence for the officers' entire IAD files will be hereby issued by this Honorable Court, for production to and inspection by counsel for Mr. Smith.

JUDGE