

STATE OF MARYLAND

v.

EDWARD NERO

Defendant

\* IN THE

\* CIRCUIT COURT

\* FOR

\* BALTIMORE CITY

\* CASE NO. 115141033

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CIRCUIT COURT  
BALTIMORE CITY  
CRIMINAL DIVISION

\* \* \* \* \*

**SUPPLEMENT TO DEFENDANTS' JOINT MOTION TO COMPEL  
AND FOR SANCTIONS**

Defendants, by their respective undersigned counsel, hereby supplement their Joint Motion to Compel and for Sanctions. In support thereof, Defendants state as follows:

**INTRODUCTION**

On July 30, 2015, the Defendants filed a Joint Motion to Compel and for Sanctions in the above-captioned case. In the Motion, Defendants provided a detailed list of the discoverable information they believed was being withheld by the State. Specifically, the Defendants believed that the State was withholding exculpatory information. The Defendants also attached to the Motion a certificate describing the good faith attempts to discuss the discovery dispute and certifying that the parties had been unable to resolve the issues.

Since the filing of the Defendants' Joint Motion to Compel and for Sanctions, the State has confirmed through its "supplemental disclosures" that it has not been complying with Maryland Rule 4-263 and, as a result, has violated the Defendants' constitutional rights by failing to produce relevant, material, and exculpatory information. The supplemental disclosures notwithstanding, it is the Defendants' belief that the State is still withholding relevant and exculpatory evidence. As explained in detail below, the materials and information which the State has withheld, and continues to withhold, from the Defendants largely relate to the following issues: (1) the

“reasonable officer” standard which serves as the legal predicate for this case, (2) the timing and cause of Mr. Gray’s injuries, and (3) the lawfulness of Mr. Gray’s initial stop and arrest.

In order to best understand the basis of the Defendant’s concerns and the gravity of this pattern, it is necessary to first review the chronology of the State’s disclosures since the filing of the Defendants’ Joint Motion to Compel and for Sanctions.

### **FACTUAL BASIS FOR SUPPLEMENT**

The basis of the Defendants’ concerns begin with an analysis of what has happened to date. As articulated in the previously filed Motion, the entire Baltimore Police Department file relating to this matter was turned over to the State’s Attorney Office on or about April 30, 2015. The State delivered to the Defendants its initial discovery disclosure on June 26, 2015, followed by two supplemental disclosures on July 16<sup>th</sup> and July 24<sup>th</sup>.

The chronology below picks up where the chronology in the first Motion to Compel ends. It demonstrates that the concerns of the Defendants at that time were justified given the unfortunate reality that the State has been withholding exculpatory evidence. The chronology further supports the Defendants’ belief that the State is still withholding materials and information which the Defendants are owed under the Maryland Rules and United States Constitution.

#### **I. State’s supplemental discovery disclosure dated August 6, 2015**

On August 6, 2015, the State delivered to the Defendants its third supplemental discovery disclosure. This disclosure includes an internal affairs resume for one of the Defendants, transcripts of testimony given by witnesses at the grand jury proceedings, closed-circuit television recordings from the date of this incident, and Baltimore Police Department investigative records. The Baltimore Police Department investigative records were created between April 12, 2015 and April 20, 2015, and contain a statement made by Donta Allen indicating that he heard Mr. Gray “banging”

his head against the metal divider in the police transport van at a point in time **after** the State contends he suffered his fatal injury.

This disclosure also contains a compact disc entitled “SAO Investigation.” Included on the disc is an investigative note dated April 22, 2015, which contains the following witness statement:

Spoke with [Blank] who . . . stated that [he/she] heard loud noises coming from Mount Street so [he/she] looked outside [his/her] bedroom window and saw a white police prisoner van parked on Mount Street next to Baker Street. [Blank] further stated that [he/she] saw officers placing someone inside the back of the police wagon. The individual inside the police van was kicking the inner door and aggressively shaking the wagon.

Also included on the “SAO Investigation” disc are four recorded witness statements, and one hundred twenty-three pictures, taken by investigators from the State’s Attorney’s Office.

## **II. State’s supplemental discovery disclosure dated August 19, 2015**

On August 19, 2015, after the State represented that it had produced on June 26th “every piece of information” from its independent investigation the State delivered to the Defendants its fourth supplemental discovery disclosure. This supplemental disclosure contains nearly four hundred Baltimore Police Department records documenting the Department’s investigation into the following: (1) the route and timing of Mr. Gray’s transport, (2) a canvass of the area where Mr. Gray was arrested; (3) Mr. Gray’s criminal background; (4) Donta Allen’s previous contacts with police officers; (5) lab and evidence reports; (6) investigative emails; (7) organizational information; (8) progress reports; (9) special investigations unit reports; and (10) supplemental witness interviews. This disclosure further provides fifteen unexecuted search and seizure warrants.

## **III. State’s supplemental discovery disclosure dated August 31, 2015**

On August 31, 2015, the State delivered to the Defendants its fifth supplemental discovery disclosure. This disclosure includes evidentiary reports related to this incident, personnel records for one of the Defendants, copies of general orders and administrative policies, and a Western

