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STATE OF MARYLAND

* IN THE

Plaintiff

* CIRCUIT COURT

DEC 15 2015

v.

* FOR

Criminal Div.
Circuit Court For
Baltimore City

CAESAR GOODSON

* BALTIMORE CITY

Defendant

* Case No. 115141032

* * * * *

**DEFENDANT'S MOTION FOR SUBPOENA FOR TANGIBLE EVIDENCE
REGARDING RECORDS OF INCARCERATION**

Defendant Caesar Goodson, through his counsel, moves pursuant to Md. Rule 4-264, and requests that this Court order the issuance of a subpoena commanding the production of records of incarceration that are relevant to this case.¹

This case concerns the death of Mr. Gray, who was arrested by Baltimore City Police Officers on April 12, 2015, and died following an injury that he suffered while in custody in a police transport van. There is evidence that Mr. Gray, while inside the van, thrashed around such that witnesses outside could hear him banging against the walls and could see the van shaking. Additionally, Donta Allen, another arrestee who was placed in the other side of the van's prisoner compartment after Stop 4, reportedly stated that he could hear Mr. Gray banging against the walls in such a way that Mr. Allen thought that Mr. Gray was trying to hurt himself.

During the investigation of Mr. Gray's death, the Baltimore Police Department and the State's Attorney's Office received information that Mr. Gray had, on a prior occasion,

¹ The Defendant has filed, concurrent with this Motion, a Motion for Subpoena for Tangible Evidence Regarding Medical Records from three area hospitals, which the Defendant incorporates here.

tried to hurt himself following an arrest. On May 17, 2015, Detective Dawnyell Taylor noted:

I spoke with ASA Bledsoe and Psienger concerning anonymous tip information related to Grey's conduct in jail. I requested a subpoena to obtain administrative, medical, and disciplinary records for Freddie Grey for any period her may have been incarcerated.

See **Ex. A**, Progress Report for Case 15H0086 (May 17, 2015). Again, on May 22, 2015, Detective Taylor noted:

On 5/22/15 an anonymous tip came in on the command line in the BPD homicide office. This female caller stated that Freddie Gray had attempted to injure himself in the past when arrested and that there was an incident inside the CBIF where he had to be restrained and disciplined for his attempts to hurt himself. I contacted the ASA's office to request a subpoena to Department of Public Safety (DPS) for an administrative, medical, and disciplinary records related to Gray to verify this claim. This caller refused to leave any personal contact information and called from an unidentified line. This will be investigated further

See **Ex. B**, Progress Report for Case 15H0086 (May 22, 2015).

Because there is clear evidence that such records may exist, but have not been provided, and such records are relevant to Officer Goodson's case, the defense requests that this Court issue a subpoena *duces tecum* to the custodian of records of the Department of Public Safety & Corrections that orders the production of all administrative, medical, and disciplinary files, including, but not limited to, base files, housing files, and location files, for Mr. Gray during any period that he was incarcerated.

LEGAL STANDARD

Md. Rule 4-264 states:

On motion of a party, the circuit court may order the issuance of a subpoena commanding a person to produce for inspection and copying at a

specified time and place before trial designated documents, recordings, photographs, or other tangible things, not privileged, which may constitute or contain evidence relevant to the action. Any response to the motion shall be filed within five days.

A person facing criminal charges is entitled to discovery of confidential records when his constitutional rights outweigh the interests of the party holding the protection of confidentiality. *Fields v. State*, 432 Md. 650, 666-67 (2013). The test for determining whether a defendant is entitled to discovery of otherwise protected information is well-established in Maryland. The "Zaal test" requires that the defendant demonstrate a "need to inspect,' that is 'a reasonable possibility that review of the records would result in discovery of usable evidence.'" *Zaal v. State*, 326 Md. 54, 81 (1992); *Fields*, 432 Md. at 667 (noting that the test set forth in *Zaal* applies broadly to different types of information). "The sufficiency of the need to inspect depends upon factors such as '[t]he nature of the charges brought against the defendant,' '[t]he issue before the court,' and the 'relationship . . . between the charges, the information sought, and the likelihood that relevant information will be obtained as a result of reviewing the records.'" *Fields*, 432 Md. at 667 (quoting *Zaal*, 326 Md. at 81-82).

Once the defendant has carried the burden to demonstrate a need to inspect the records, the Court "may elect to review the records alone, to conduct the review in the presence of counsel, or to permit review by counsel alone, as officers of the court, subject to such restrictions as the court requires to protect the records' confidentiality." *Zaal*, 326 Md. at 87. The Court of Appeals has emphasized that defense counsel's participation is

