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STATE OF MARYLAND

* IN THE

Plaintiff

* CIRCUIT COURT

v.

* FOR

CAESAR GOODSON

* BALTIMORE CITY

Defendant

* Case No. 115141032

DEC 15 2015
Criminal Div.
Circuit Court For
Baltimore City

* * * * *

**DEFENDANT'S MOTION FOR SUBPOENA FOR TANGIBLE EVIDENCE
REGARDING MEDICAL RECORDS**

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 medical records that are relevant to this case.

On December 7, 2015, the State provided Officer Goodson with evidence that the deceased in this case, Mr. Gray, had a preexisting spine injury or condition. *See Ex. A*, Email and attached Memorandum of Sgt. John Herzog. The State contends that Mr. Gray died as a result of a spinal injury, and charges Officer Goodson in Mr. Gray's death. The State's own investigation revealed information concerning past attempts by Mr. Gray to injure himself while in custody.¹ *See Ex. B*, Progress Reports for Case 15H0086 (May 17 & 22, 2015). However, only just recently, the State disclosed to Officer Goodson a memorandum dated May 1, 2015 that states that Mr. Gray, in an interview on March 31, 2015 at the Western District Station, told police officers that, "I hurt my back," or "I have a bad back." *Ex. A*. Sgt. Herzog informed the State's Attorney's Office, as well as a

¹ Officer Goodson has filed a separate motion, concurrent with the instant motion, for a subpoena on the custodian of records of the Maryland Department of Public Safety & Corrections for any administrative, medical, or disciplinary records related to Mr. Gray for any period of incarceration, which the Defendant incorporates here.

Detective on the FIT team who was part of the task force investigating Mr. Gray's death.
Id.

In light of this just-disclosed evidence, Mr. Gray's medical records "may constitute or contain evidence relevant to the action" under Md. Rule 4-264. Accordingly, Officer Goodson requests that this Court issue a subpoena duces tecum on the custodian of medical records for (1) the University of Maryland Medical Center (Downtown), (2) the University of Maryland Medical Center - Midtown Campus, and (3) Bon Secours Hospital, commanding each to produce for inspection and copying before trial any records of treatment that Mr. Gray received in the respective hospitals within five years of the events that are the subject of this trial.

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 desirable, particularly to identify impeachment information. *Fields*, 432 Md. at 668; *Zaal*, 326 Md. at 86-87.

As stated by the Court of Appeals, this Court's "ultimate determination of whether to allow discovery of the sought-after information does not rest on whether the records themselves are admissible at trial, but rather on whether disclosing that material to the seeking party would reveal or lead to admissible evidence. *Fields*, 432 Md. at 668-69.

The Court of Appeals held in *Zaal*:

[T]he court's review is not to determine whether, and, if so, what, is "directly admissible;" rather, it is to exclude from the parties' review material that could not, in anyone's imagination, properly be used in defense or lead to the discovery of usable evidence.

