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CIRCUIT COURT
BALTIMORE CITY
CRIMINAL DIVISION

STATE OF MARYLAND	*	IN THE
	*	CIRCUIT COURT FOR
v.	*	BALTIMORE CITY
	*	
GARRETT MILLER	*	CASE No. 115141034

* * * * * * * * * * * * *

STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENT TO DEFENDANTS' JOINT MOTION TO COMPEL AND FOR SANCTIONS[1]

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City; Michael Schatzow, Chief Deputy State's Attorney for Baltimore City; Janice L. Bledsoe, Deputy State's Attorney for Baltimore City; and Matthew Pillion, Assistant State's Attorney for Baltimore City; and responds to the Defendant's Supplement to Defendants' Joint Motion to Compel and for Sanctions.

Introduction

The Defendants' Supplement reads like the very type of pleading this Court requested that the Parties not file. Once more the Defendants have used a public pleading not to raise a legitimate dispute for this Court's resolution but to offer the media additional fodder to drive the Defendants' narrative of this case. Once more the Defendants have publicly villainized the victim before trial, blaming him for his own injuries and calling him a criminal. And once more the Defendants have argued for sanctions against the State without any reasonable foundation of

[1] For record clarity, this Response is made to a Supplement to a July 30, 2015, defense pleading jointly filed and jointly captioned in case numbers 115141032-037. The cases are not joined for trial, nor are all of the Defendants charged with the same crimes. Because, however, the Supplement refers to the Defendants in the plural and draws no distinction between the differences of proof in the Defendants' separate trials as it bears on the discoverability of information in their cases, the State's Responses in the six cases are identical in substance and refer to the Defendants in the plural rather than the singular, except in Part II.B. below. Nothing in this Response should be construed to abandon arguments set forth in the State's August 6 Response to the July 30 defense Motion. The Defendants did not then and have not now shown cause for the untimeliness of their Motion to Compel, despite protesting that the State has provided supplemental discovery after the June 26 deadline for initial disclosures.

law or fact, opting instead to rely on the strength of slandering prosecutors and using conclusory terms like "exculpatory" with no basis or explanation. When reduced to its merits, however, the Defendants' Supplement provides no grounds for the relief it seeks and amounts to a generalized complaint that the State has continued to update its disclosures as this complicated litigation has advanced toward trial. The Defendants misrepresent the State's discovery obligations and disclosures to date, repeatedly label information as "exculpatory" without any apparent regard for the actual meaning of the word, fail to distinguish material from immaterial information given the crimes charged, and speciously reason that the State's supplemental disclosures demonstrate suppression of discoverable material, when in fact they show the opposite—that the State has provided information far beyond that required by law in an abundance of caution and in the vain hope of avoiding this exact type of discovery dispute.

I. The fundamental principles of the discovery process in criminal cases

A. Maryland law affords the Defendants fair access but not full access to the State's information and does not favor sanctions for minor, nonprejudicial discovery violations

As the Maryland Court of Appeals has described, "[t]he purpose of discovery is to avoid surprise at trial and to give the defendant sufficient time to prepare a defense." *Hutchinson v. State*, 406 Md. 219, 227 (2008). Maryland's criminal discovery practice aims at "providing adequate information to both parties to facilitate informed pleas, ensuring thorough and effective cross-examination, and expediting the trial process by diminishing the need for continuances to deal with unfamiliar information presented at trial." *Williams v. State*, 364 Md. 160, 172 (2001). Although Maryland at one time permitted a criminal defendant to discover "all relevant materials held by the State," starting in 1977 the Court moved to a discovery policy "strictly limiting the

defendant's access to discovery from the State to [an] enumerated list of discoverable items." *Cole v. State*, 378 Md. 42, 63, n. 18 (2003). Since then, the Court has held as axiomatic that "trial judges have no power beyond that conferred by Rule 4-263 to order discovery of tangible evidence or documents in the State's possession." *Id.* at 57. In its present form, Rule 4-263 limits the State's discovery obligations to eleven categories of information.[2] Rule 4-263(d). Unlike in civil cases, however, "no rule provides generally for the discovery of all relevant information and documents in the State's possession or control in criminal cases." *Id.* at 62.

Regarding the timing of discovery, the State must make its mandatory disclosures under Rule 4-263(d) within 30 days after the earlier of counsel's or the defendant's first appearance before the Circuit Court. Rule 4-263(h). Consistent with the Rule's purpose of providing the defendant sufficient time to prepare for trial, Rule 4-263's 30-day disclosure provision does not preclude the use at trial of information disclosed after the expiration of the 30-day deadline.[3] Instead, the State "is under a continuing obligation to produce discoverable material and information" to the defense. Rule 4-263(i).

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[2] On October 6, 2015, the Rules Committee recommended deleting the eleventh category governing certain extra discovery obligations in capital cases, which now no longer exist in this State after the repeal of the death penalty. One Hundred and Eighty-Eighth Rep. of the Standing Comm. on R. of Prac. and Proc. at 92 (Oct. 6, 2015).

[3] Indeed, Maryland law does not even require disclosure of certain information until after that period has elapsed in a typical case. For example, Section 10-915 of the Courts Article does not require the disclosure of DNA analysis results and data until 30 days before trial. Cts. & Jud. Proc. Art. § 10-915(c)(2). Likewise, Rule 5-902(b) provides that certified business records need only be disclosed at least 10 days before trial. Moreover, Rule 4-271(a) does not require that a trial date even be set until the same deadline Rule 4-263 sets for the State's disclosures. To read Rule 4-263 as literally mandating that the State disclose all discovery by the end of the 30-day deadline would require an extraordinarily fast turn-around between counsel's or the defendant's first appearance and the trial date in order to avoid rendering the DNA and business record deadlines mere surplusage. Such a reading would also ignore Maryland's speedy trial jurisprudence which recognizes that the "span of time from charging to the first scheduled trial date is necessary for the orderly administration of justice," *Howell v. State*, 87 Md. App. 57, 82 (1991), and that in assessing the permissible period of delay before trial that "courts must be cognizant of both the degree of complexity associated with a particular charge and the potential impact an adverse verdict would have on the accused," *Glover v. State*, 368 Md. 211, 224 (2002).

To the extent that a defendant believes discovery has been untimely or otherwise provided or withheld in violation of the Rule, the defendant may ask the trial court to order as a sanction the relief specified in Rule 4-263(n). In selecting an appropriate form of relief based on alleged discovery violations, "[t]he Court of Appeals has identified five factors ('*Taliaferro* factors') that a trial court must consider when exercising its discretion to exclude evidence disclosed in violation of the discovery rules: (1) whether the disclosure violation was technical or substantial; (2) the timing of the ultimate disclosure; (3) the reason, if any, for the violation; (4) the degree of prejudice to the parties respectively offering and opposing the evidence; (5) whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance." *Joyner v. State*, 208 Md. App. 500, 524 (2012) (citing *Taliaferro v. State*, 295 Md. 376, 390-91 (1983)).

Given the Defendants' complaints here about the timing of disclosures, *Joyner* provides an instructive holding. In *Joyner*, the State filed an initial disclosure that the State intended to call a then-unknown chemist to provide expert testimony that certain substances were cocaine and marijuana. *Id.* at 529. The State made the substances available to the defense for independent testing, but the State did not give notice of the chemist's name or disclose her report until eight days before trial. *Id.* Though the defendant there protested that this disclosure should have been made within Rule 4-263's initial 30-day deadline, the Court of Special Appeals construed the State's disclosure as having "fulfilled its 'continuing duty to disclose' by supplementing its discovery" and determined that the lateness of the notice did not warrant a sanction because the defendant "failed to demonstrate any prejudice that resulted from any delay in disclosing the name of the [ ] chemist who would testify or the admission of her report, as soon as her identity was known to the prosecutor." *Id.* Here, the Defendants complain about

supplemental disclosures made over nine weeks before the first scheduled trial and over twenty-three weeks before the last scheduled trial. The Defendants could not—and perhaps for that reason do not—make even a pretense of prejudice.

B. The word *exculpatory* does not mean "relevant," nor do pretrial supplemental disclosures violate *Brady* and its implementing provisions

A defendant's protests about the failure to disclose "exculpatory" evidence ring out in a pleading like cries of "fire" in a movie theatre. In deciding whether the plea amounts to a genuine complaint or a false alarm, however, the Court must carefully consider the type of evidence to which the adjective correctly applies. "[E]xculpatory evidence is that which is 'capable of clearing or tending to clear the accused of guilt.'" *Jackson v. State*, 207 Md. App. 336, 357 (2012) (quoting *Colkley v. State*, 204 Md. App. 593, 606 (2012)); *accord State v. Giles*, 239 Md. 458, 469 (1965). As Judge Moylan aptly noted, however,

> all that is non-inculpatory is not thereby exculpatory, just as all that is non-exculpatory is not thereby inculpatory. The absence of a quality is not the same thing as the opposite of that quality. There is a wide 'No Man's Land' of neutral connotation between the opposing verbal trench lines.

Colkley, 204 Md. at 608.

The State's obligation to disclose genuine exculpatory information derives from a prosecutor's constitutional responsibilities outlined in *Brady v. Maryland*, 373 U.S. 83 (1963). To establish a violation of the *Brady* case, however, a defendant must do more than invoke its name; rather the defendant "must establish three necessary components: (1) that the prosecutor suppressed or withheld evidence that is (2) favorable to the defense—either because it is exculpatory, provides a basis for mitigation of sentence, or because it provides grounds for impeaching a witness—and (3) that the suppressed evidence is material." *Diallo v. State*, 413

Md. 678, 704 (2010). "The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *U.S. v. Bagley*, 473 U.S. 667, 682 (1985). "Suppressed evidence, for *Brady* purposes, is 'information which had been known to the prosecution but unknown to the defense.'" *Diallo*, 413 Md. at 704. Consequently, "*Brady* offers a defendant no relief when the defendant knew or should have known facts permitting him or her to take advantage of the evidence in question or when a reasonable defendant would have found the evidence." *Id.* at 705. Indeed, "[t]he *Brady* rule does not relieve the defendant from the obligation to investigate the case and prepare for trial," and "[t]he prosecution cannot be said to have suppressed evidence for *Brady* purposes when the information allegedly suppressed was available to the defendant through reasonable and diligent investigation." *Ware v. State*, 348 Md. 19, 39 (1997). Moreover, no *Brady* violation occurs when the non-disclosed evidence "would have impeached cumulative or non-material witnesses' testimony," *Ellsworth v. Balt. Police Dep't*, 438 Md. 69, 85 (2014), or was "information merely repetitious, cumulative, or embellishing of facts otherwise known to the defense . . . ." *U.S. v. Agurs*, 427 U.S. 97, 110 n. 16 (1976).

Regarding specific discovery procedural rules, "*Brady* and its progeny deal not . . . with discovery sufficiently timely to enable the defense team to calibrate more finely its trial tactics but with the very different issue of withholding from the knowledge of the jury, right through the close of the trial, exculpatory evidence which, had the jury known of it, might well have produced a different verdict." *De Luca v. State*, 78 Md. App. 395, 424 (1989). Under *Brady*, "[d]efense counsel has no constitutional right to conduct his own search of the State's files to argue relevance." *Pennsylvania v. Ritchie*, 480 U.S. 39, 59 (1987). Furthermore, "there is no

general constitutional right to discovery in a criminal case, and *Brady* did not create one." *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977).

Maryland has implemented *Brady's* holding with Rule 4-263(d)(5)'s requirement that the State disclose "[a]ll material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged." In 2008, Rule 4-263 was amended to more specifically require disclosure by the State of impeachment

> evidence of a relationship or agreement between the witness and prosecution; prior criminal convictions; materially inconsistent witness statements not otherwise memorialized; medical, psychiatric, or addiction conditions of the witness that would impair his ability to testify truthfully; the witness's failure of a polygraph examination; the witness's failure to identify the defendant; and "evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608 (b).

Ellsworth, 438 Md. at 87. The "Rule does not require disclosure by the State of alleged investigations or 'bad acts' of witnesses, not having resulted in a conviction and not related to a witness's character for untruthfulness" because "mere accusations of crime or misconduct may not be used to impeach." *Id.* at 87-88. Moreover, the Rule says nothing about disclosures related to the character of a deceased victim.

II. The Defendants' allegations that the State has sanctionably violated Rule 4-263 or failed to disclose *Brady* material lack legal merit

Within this framework of discovery principles, the Defendants' thunderous complaints about purportedly sanctionable pretrial discovery or *Brady* violations quickly fade to mere bluster. The Defendants' four specific allegations fail either on the law, on the facts, or on both. They certainly do not merit the panoply of relief that the Defendants demand.

A. Supplementing discovery as the case evolves does not violate Rule 4-263

Perhaps most meritless among these complaints is the Defendants' literalist reading of Rule 4-263 that because the State has provided numerous supplemental disclosures since the June 26 initial disclosure 30 days after counsel entered their appearance and because some of those disclosures included information that the State possessed prior to June 26, then, ipso facto, "the State has violated its discovery obligations," Def. Supp. at 12, meriting in the Defendants' view that "any of the State's withheld evidence or testimony which is inculpatory be excluded at trial," *id.* at 13. The Defendants acknowledge Rule 4-263's provisions regarding the State's continuing duty to disclose discovery when the State "obtains further material information," but they insist that this provision "is meant to only cover information which is obtained after the initial discovery disclosure is made." *Id.* at 12. Such a reading focuses only on the word *obtains* and not on the equally important word *material* within the Rule's terms. While a firm date can be affixed to the point at which the State *obtains* information, the materiality of information shifts as trial strategies are refined. "A material proposition is also called a 'consequential fact,'" and "[m]ateriality looks to the relation between the proposition for which the evidence is offered and the issues in the case." *Smith v. State*, 423 Md. 573, 590 (2011).

The issues in this case have unquestionably become somewhat different as the Defendants have raised new arguments and as the State has developed and detailed its trial strategy. Changes to those issues in turn have changed the State's view of certain evidence in this case and how it could be used in relation to the propositions underlying those changed issues. What once was immaterial became material and was supplementally disclosed despite not having been newly obtained. This continuing re-evaluation of the evidence fully comports not only with Rule 4-263 but with common legal sense. Particularly in a case like this with

complex and evolving issues, the State cannot be expected to have thought of every conceivable notion of materiality on June 26. Moreover, the trials in this matter are still many weeks away, and the Defendants have not identified how they have been prejudiced by supplemental disclosures on today's date, much less how prejudice would linger until the trial dates. The Defendants do not even attempt to argue why the *Taliaferro* factors favor exclusion of evidence. In that regard, however, if the State's disclosures in *Joyner* a mere eight days before trial constitute unsanctionable "continuing duty" discovery, then certainly the State's supplemental disclosures here weeks away from trial are likewise not sanctionable.

B. The State's supplemental disclosure of two statements that Mr. Gray may have been shaking the transport wagon does not constitute a *Brady* violation or a sanctionable discovery violation

The Defendants also claim that the "State has failed to disclose discoverable information pertaining to the timing and cause of Mr. Gray's injuries." Def. Supp. at 9. They argue that the State must prove that the Defendants' "acts or omissions were the proximate cause of Mr. Gray's injuries and/or death" and "show that there were no intervening or superseding causes between the alleged negligence of the Defendants and Mr. Gray's death." *Id.* at 7. On this issue, the Defendants accuse the State of "purposefully withholding" *Brady* material, *id.* at 8, citing as proof the State's August 6 supplemental disclosure of an investigator's note that he spoke to a resident of Gilmor Homes who reported that Mr. Gray "was kicking the inner door and aggressively shaking the wagon" while it was parked at Mount St. and Baker St., *id.* at 3, and the State's September 11 supplement disclosure that Officer Aaron Jackson, who responded as backup during Mr. Gray's arrest, reported seeing the wagon at that same location "violently shaking inside" while, from his perspective, "[Mr. Gray] was losing his mind," *id.* at 6. The

Defendants describe this evidence as "profoundly exculpatory . . . as it could break the link of proximate cause regarding what caused Mr. Gray's injuries." *Id.* at 6.

Analyzing the validity of this claim, first, the State notes that Defendant Miller is not charged with manslaughter, rather with reckless endangerment. As such, the State need not actually prove that Defendant Miller's actions actually caused Mr. Gray's death because "reckless endangerment does not require . . . that any harm be inflicted on a victim," only "that a substantial risk or threat of such harm be created and then consciously disregarded." *Williams v. State*, 100 Md. App. 468, 482 (1994). The State, of course, must prove that the Defendant's acts created a risk that could actually have resulted in harm (i.e., firing an empty gun at someone is not reckless endangerment even if the defendant thinks the gun is loaded), *Williams*, 100 Md. App. at 495-96, such that proof of actual harm proximately resulting from the acts will serve as the best proof that the acts created a risk of harm, but technically the State need not prove proximate causation as the Defendant insists. In this regard, evidence that Mr. Gray was inside the transport wagon and was able to shake the van, far from being exculpatory, would be strongly inculpatory because it would show that the Defendant was subjectively aware that Mr. Gray could be violently shaken within the vehicle, which is part of the reason that the failure to seatbelt him recklessly risked harm. Indeed, the inculpatory nature of this evidence greatly magnifies in conjunction with the General Order governing seatbelts, which explicitly warned that a detainee could injure himself if not properly seatbelted.

In addition to not being exculpatory, the State did not suppress evidence that Mr. Gray may have shaken the van prior to being transported. The supplemental disclosures were provided well in advance of trial. More to the point, the State had already provided this same information on June 26 in the initial discovery. On pages 10-11 of the State's Initial Disclosures,

Notices, and Motions, the index lists that the State disclosed the statements of Officers Zachary Novak and Matthew Wood. Both officers expressly described that Mr. Gray appeared to be shaking the van prior to transport, and the State will gladly provide the Court with copies of those statements if the Court would like to hear them *in camera*. Even if, therefore, the information was deemed exculpatory, the late disclosure does not constitute a *Brady* violation because it was provided before trial and because it was "information merely repetitious, cumulative, or embellishing of facts otherwise known to the defense . . . ." *U.S. v. Agurs*, 427 U.S. at 110 n. 16.

The fact that the State did not disclose these cumulative statements until after June 26 shows no illicit intentions; rather it shows that the State re-reviewed the evidence and disclosed the statements in an abundance of caution. Indeed, the State notes that neither Officer Jackson nor the Gilmor Homes resident were listed as potential witnesses on the State's June 26 disclosures, meaning Rule 4-263 did not require disclosure of their statements as "witness statements." The State simply did not and does not view their statements as exculpatory but had hoped (in vain, it turns out) that providing more information would result in less litigation. Instead, the Defendant has used the supplemental disclosures as an opportunity to quote the statements at length in a pleading open to the public. The Defendant even represented to the Court that Officer Jackson's statement "was one of the first eye witness accounts definitively demonstrating" that Mr. Gray was shaking the van. Def. Supp. at 6. Whether or not the fourth account of this same information can correctly be labeled "one of the first" accounts, the Defendant's feigned ignorance created a convenient forum for disseminating defense theories to the press. As such claims relate to a discovery dispute, however, the Defendant certainly cannot claim prejudice from information known from two sources on June 26 and then from two more

sources well before trial. The State's supplemental disclosures do not amount to a *Brady* violation or to a sanctionable discovery violation. They amount to proof of the State's continued diligence and good faith.

C. The State's supplemental disclosure of material only loosely related to Mr. Gray's arrest provides no basis for finding a discovery or Brady violation

Next the Defendants claim that the "State has failed to disclose discoverable information pertaining to the lawfulness of Mr. Gray's initial stop and arrest." Def. Supp. at 10. The Defendants claim such information is "relevant, material, and exculpatory," *id.* at 1, citing as proof of a *Brady* violation three pieces of information that the State disclosed after June 26: (1) the identity of an individual who said he was with Mr. Gray as the officers began the chase that initiated this case; (2) a document from 2011 entitled, "Western District Areas of Concern/Operational Plan"; and (3) a video filmed on July 13, 2015, in which a detective demonstrates the operation of the knife Mr. Gray had when he was arrested and in which the detective refers to the knife as "spring-assisted." Def. Supp. at 10-11. Putting aside the absurdity of invoking *Brady* to attack the disclosure of evidence before trial, as opposed to the suppression of evidence through the trial's duration, none of these three disclosures constitute exculpatory material or even a sanctionable violation of Rule 4-263.

First, regarding the identity of the person who says he was with Mr. Gray when the police began to chase him, the Defendants argue that they are "at a loss as to why the State felt this information should not be disclosed" until the September 11 supplemental because "[t]his individual can help explain what Mr. Gray was doing on the corner that day, why he fled from the police, and whether he had taken similar actions in the past," which they claim is information

"absolutely essential to those Defendants charged with arresting Mr. Gray absent probable cause." Def. Supp. at 10. That police officer defendants would make this argument is surprising, given that it requires inverting the perspective from which a Fourth Amendment seizure is assessed. As the Supreme Court has consistently articulated,

> The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, *viewed from the standpoint of an objectively reasonable police officer*, amount to reasonable suspicion or to probable cause.

Ornelas v. U.S., 517 U.S. 690, 696 (1996) (emphasis added). What Mr. Gray was actually doing that day, why Mr. Gray actually fled from police, and what Mr. Gray's actual past actions entailed have absolutely nothing to do with the relevant standard for assessing whether the arresting Defendants' actions were legally justified. What matters is what those Defendants knew or reasonably believed. The knowledge or beliefs held by a civilian accompanying Mr. Gray could not supply the Defendants with post-hoc facts to justify their actions, so that person's testimony is neither exculpatory nor even relevant. Consequently, the State's supplemental disclosure of that person's identity—again, done in an abundance of caution and in an effort at total transparency—does not violate *Brady* or Rule 4-263 because it was not even discoverable information to begin with.

Second, the Defendants assail the August 31 supplemental disclosure of a document entitled, "Western District Areas of Concern/Operational Plan." The document, written on July 17, 2011, by the former Deputy Major of the Western District, James Handley, describes a plan *at that time* to address "historical and current violence" based on "current concerns" and executed using "intelligence in reference to crimes of violence and persons of interest." The Defendants claim that this document constitutes "information demonstrating that the area in

which Mr. Gray fled from police was a high crime, high narcotics area" with attendant violence such that this information bears on the reasonableness of the arresting officers' actions toward Mr. Gray. Def. Supp. at 10-11. The Defendants claim that the State possessed this information prior to June 26 and so should have disclosed it on that date with the initial discovery.

Chief among the manifold problems with this argument, the Defendants overlook the fact that this document was, in fact, made available to them on June 26. The document was seized from Defendant Goodson's locker at the Western District after the execution of search and seizure warrants there and at his home. The State's June 26 disclosure included photographs taken during this search and a property list of the items submitted into evidence. Page 13 of the State's index of disclosures lists photos of "S+S 1020 Lakemont District Locker Goodson" and the "BPD Investigation Binder 2 of 2 Redacted," which listed on pages 380-381 all of the items taken into evidence based on that warrant. Moreover, Page 6 of the State's June 26 disclosures expressly states that the "Defendant, upon reasonable notice to the undersigned, is entitled to the opportunity to inspect, copy, and photograph all items obtained from or belonging to Defendant, whether or not the State intends to use the item at a hearing or trial in this case." The Defendants not only knew of the existence of the materials from which the document was pulled but could have inspected it upon request. They simply never asked to view the materials. As earlier noted, "[t]he *Brady* rule does not relieve the defendant from the obligation to investigate the case and prepare for trial," and "[t]he prosecution cannot be said to have suppressed evidence for *Brady* purposes when the information allegedly suppressed was available to the defendant through reasonable and diligent investigation." *Ware*, 348 Md. at 39. Furthermore, the State's notice on June 26 simply mirrored the language of Rule 4-263(d)(10) governing inspection of property seized from the defendant. The fact that the State later specifically photocopied this document

and gave it directly to the Defendants' attorneys does not cause a discovery violation after the State had already fully complied on June 26 with *Brady*'s and Rule 4-263's dictates.

Furthermore, the document in no way exculpates the Defendants from the allegations. For one thing, the document is over four years old and was expressly based on then-current concerns and then-current intelligence and was a command plan written by someone who is no longer even the Deputy Major of the Western District. Of course, the Defendants, being police officers working in the Western District, hardly need a four-year old Operational Plan to have evidence about the level of crime and violence in the area around Gilmor Homes. Even if there were a dispute about the character of the area for purposes of applying *Illinois v. Wardlow*, 528 U.S. 119 (2000), *Wardlow* is about the justification needed to conduct an investigatory detention, not an arrest. The State here has consistently maintained that the police misconduct related to the seizure of Mr. Gray involves his arrest without probable cause. Under the circumstances of this case, the character of the neighborhood is immaterial. Indeed, the very appellate case the Defendants cite to support their argument in fact refutes it. The Court of Appeals's decision in *In re David S.*, 367 Md. 523 (2002), holding that officers did not escalate an investigatory detention into an arrest when they handcuffed the respondent and conducted a "hard take down," turned on the characteristics of the suspect, not the location of the detention. Applying the principle that "an investigatory stop will not be transformed into an arrest when the officers take reasonable measures to neutralize the risk of physical harm and to determine whether the person in question is armed," the Court upheld the officers' actions because an officer "saw the respondent place a dark object, which looked like a handgun, in the front of his waistband" after engaging "in what appeared to be a burglary" such that the officers' "hard take down" "was not unreasonable because the officers reasonably could have suspected that respondent posed a threat

to their safety." *Id.* at 535-40. A document from 2011 suggesting that the area around Gilmor Homes was then experiencing violence does not even conceivably provide reasonable grounds for the Defendants to have believed that Mr. Gray, over four years later, posed a threat to their safety by virtue of being in the same area. To call this document "exculpatory" is so wildly inaccurate that the State can only infer that the Defendants quoted the document in their pleading for the benefit of the media, not the Court.

Third in this category, the Defendants allege that the State improperly withheld "information indicating that the knife found on Mr. Gray the day of his arrest was illegal." Def. Supp. at 11. This claim, a familiar refrain from the Defendants' pleadings, is based on the State's August 19 supplemental disclosure of a video filmed by Detective Dawnyell Taylor on July 13 as she opens and closes the knife Mr. Gray possessed and as she describes it as a "spring-assisted" knife. Taking enormous inferential bounds from this video, the Defendants argue that "spring-assisted" knives are illegal in Baltimore City, that Detective Taylor's description of the knife as being "spring-assisted" thereby proves that Mr. Gray's knife was illegal, which in turn "further proves that the arrest of Mr. Gray was lawful" as being a misdemeanor committed in the officers' presence, which then demonstrates the State's discovery violation. Def. Supp. at 11.

Dissecting these inferences, the most immediate problem is that the video did not exist until July 13. The State could not have disclosed a nonexistent video on June 26. The State's Attorney's Office was not even aware that the video existed until the police provided a copy on August 4, together with other material possessed by the police but unknown to the prosecutors. Next, the claim that "spring-assisted" knives are illegal under Article 19, § 59-22 of the Baltimore City Code simply finds no support from the text of the ordinance or common parlance. The ordinance explicitly bans only knives "commonly known as a switch-blade knife." If the

distinction is not apparent from the plain language, the State will present evidence at trial that so-called "spring-assisted" knives are among the most commonly sold folding knives in Maryland and are not the same thing as switch-blades. That the Defendants self-servingly claim that "spring-assisted" knives are switch-blades simply does not make it true, no matter how many times they repeat it. In any event, the fact that Detective Taylor calls the knife "spring-assisted" certainly does not constitute exculpatory or *Brady* material because her description, even if it stated the relevant standard, was not new information to the Defendants. On page 13 of their May 27 Joint Motion to Dismiss for Prosecutorial Misconduct, or in the Alternative for Sanctions, the Defendants cite a Baltimore Sun article that states that a "police task force studied the knife and determined it was 'spring-assisted . . . .'" As previously noted, "suppressed evidence, for *Brady* purposes, is 'information which had been known to the prosecution but unknown to the defense.'" *Diallo*, 413 Md. at 704. Moreover, the State has consistently argued that Mr. Gray was arrested prior to the discovery of the knife in his pocket, such that the legality of the knife is largely immaterial except to rebut any claims the Defendants may raise about their beliefs and the reasonableness of those beliefs. In short, Detective Taylor's video, being of only arguable relevance, zero exculpatory value, and having been disclosed weeks before trial without even being a required disclosure under Rule 4-263, unquestionably does not constitute a discovery or *Brady* violation.

D. The failure to disclose police officer expert opinions which do not exist does not constitute a discovery or *Brady* violation

The fourth and final plank in the Defendants' argument requires an impressive reach to even grasp. The Defendants point to the State's largely boilerplate June 26 Initial Disclosure pleading and claim that because the State checked the box next to the "Law enforcement

experts" disclosure, then the State has committed a discovery or *Brady* violation by failing to disclose the expert opinions of all such persons. To be sure, the disclosure says that "[a]ny police officers called as witnesses will testify as experts in police training, police procedure, police policy, police orders, police safety procedures, police email, police investigations, police misconduct, and police transportation of prisoners." The Defendants insist upon a literal reading of that disclosure and ask the Court to order all police witnesses to be deposed as to their opinions about the reasonableness of the Defendants' actions and/or omissions; the use of seatbelts to secure arrestees; the legality of Mr. Gray's initial stop and subsequent arrest; the legality of the knife at issue; the criminality of this matter; whether general orders are intended to form the basis of criminal prosecutions; and whether Mr. Gray was injured or not injured at the point in time where Defendant Porter or Defendant White made contact with him. Def. Supp. at 13.

Putting aside that expert testimony about most of these issues would necessarily entail testimony about matters of law and not of fact or about a mental state of the Defendants (e.g., intent, subjective awareness of risk, etc.) and would, thus, be prohibited under Rules 5-702 and 5-704, the attorneys for the Defendants and for the State have discussed and continue to discuss extensively those persons the State actually intends to call as expert witnesses. For those experts already consulted or retained, the State has filed numerous supplemental disclosures specifying precisely who the witness will be and providing the known information about those witnesses required under Rule 4-263(d)(8). Given this ongoing dialogue outside of court filings, for the Defendants to protest now in pleadings that they have not received that which they know does not exist or will not actually be used at trial is simply disingenuous.

Moreover, Rule 4-263(d)(8) only requires expert disclosures "[a]s to each expert consulted by the State's Attorney"—*consulted* in the past tense, not the future tense. As the State has consulted an expert, the State has made a disclosure about that expert. The fact that the State checked a box on June 26 alerting the Defendants to the State's intent to use expert testimony as to certain aspects of police procedure shows only that the State was diligently disclosing as much as possible as early as possible. Just as in *Joyner*, where the ultimate identity of the expert and the actual opinion of that expert were disclosed in supplemental filings after the initial discovery was provided, the State has been doing precisely what Rule 4-263 contemplates. For those police officers whose detailed disclosures under Rule 4-263(d)(8) have not been provided prior to trial, the Defendants can rest comfortably in the knowledge that the State will not be eliciting expert testimony from those officers. The Defendants' literalism plainly does not derive from any genuine confusion or complaint.

III. The Defendants' request for the Court to infer suppression of evidence based on disclosure of evidence serves only as an excuse to disseminate discovery to the media

Aside from the above primary arguments, the Defendants also spend much of their Supplement selectively reciting the contents of the State's supplemental disclosures since the beginning of August. They do so ostensibly on the premise that the State's supplements to discovery somehow demonstrate the suppression of discovery or show some misrepresentation to the Court such that the Defendants claim they are "in no position to trust the State's assertion that it has disclosed everything to which the Defendants are entitled." Def. Supp. at 13. If the Defendants choose to impugn the credibility of the prosecutors in this case and quibble over imperfections in the State's discovery process, so be it, but the Court should have full confidence that the attorneys for the State have dutifully sorted and disclosed a mountain of evidence in this

case and have always maintained perfect candor with the Court. The State will not engage in the same tactics and publicize the evidence in the name of litigating the disclosures of the evidence; however, in the sections below, the State will generally describe the evidence in order to address the Defendants' arguments about each supplemental disclosure and to demonstrate the State's good faith. These supplemental disclosures followed the State's timely initial disclosure on June 26 of 53 gigabytes of information, including copies of 11,291 pages of documents.

a. The State's supplemental discovery disclosure dated August 6, 2015

This disclosure contained the following:

1. Internal affairs records for five of the Defendants: the State provided these in an abundance of caution. The State has no plans to use them in its case in chief, they have no exculpatory or mitigating value, and they are the Defendants' own records to which they have equal access.

2. Grand Jury transcripts for four police officers: the State had already provided the Defendants with each of these officers' recorded statements made to police investigators, as detailed on pages 10-11 of the State's Initial Disclosures. Grand Jury testimony is ordinarily secret. *See e.g., In re Criminal Investigation No. 437 in Circuit Court*, 316 Md. 66, 100 (1989). The fact that the State waited to disclose this testimony until after further consideration of whether these officers would actually be called as witnesses does not show a discovery violation by the State. It shows due deliberation and respect for the Grand Jury.

3. Additional CCTV footage: the State had already disclosed a trove of CCTV footage in its initial discovery, as listed on page 12 of the Initial Disclosures. This additional

footage shows a time earlier in the morning prior to the foot chase that ensued and was disclosed after the State re-reviewed the footage and noticed an extra detail that the State intends to use at trial. Accordingly, the State promptly disclosed it.

4. Additional BPD records: this disclosure contained various records and documents from the BPD investigation that were not originally disclosed to the State. The State obtained these additional documents after meeting with BPD detectives on August 4 to conduct a file reconciliation. Certainly, these were in the "State's" possession, but the State's Attorney did not act in bad faith in not disclosing them on June 26 because the police had not yet turned them over. The records consisted of:

(a) An incident summary about supervisor complaints: the same information had already been disclosed on June 26 within the contents of the KGA broadcasts from April 12.

(b) Two maps: one map showed a possible route of the foot chase, and one map showed a possible route of the transportation wagon's route. Neither map contains an author or explains how the routes were drawn. At best, they are speculative, not substantive.

(c) Police entry level objectives: this document consists of a long list of lessons police trainees are supposed to learn in the Academy. The document has only minimal relevance, will likely not even be used at trial, and was disclosed only in an abundance of caution.

(d) Various supplemental reports: these documents simply note that statements already disclosed were in fact taken, one of which details Donta Allen's

statement, the actual recording of which had already been disclosed on June 26; list personal information about a Fire Department employee; detail efforts to canvas for witnesses (one report shows nine houses with no answer, two with no information to offer, and one who already provided everything known; another report shows four houses whose residents saw nothing, four houses with no answer, and one vacant house); detail efforts to look for surveillance footage at 15 locations resulting in no footage found; and list a wagon training schedule for the period of April 21-24. The State can conceive of no evidentiary—much less exculpatory value—in any of these documents, which were disclosed in an abundance of caution.

5. A disc of State's Attorney's Office investigative material containing:

(a) A note that a resident of Gilmor Homes (whose name the State will not list in this pleading but that was provided in the disclosure to the defense) saw Mr. Gray "kicking the inner door and aggressively shaking the wagon." As already discussed, the State had already provided the statements of two police officers who said the same thing. This new disclosure was not exculpatory and was cumulative at best. The State does not intend to even call this resident as a witness.

(b) Four recorded statements from persons in and around Gilmor Homes: the first statement is simply the investigator filming a person who is giving a televised interview to Channel 2 News. The second statement is of a person simply describing Mr. Gray yelling as he was placed in the wagon (a fact widely

televised) and opining about the situation. The third statement is of a male and a female also just describing Mr. Gray screaming prior to being transported and complaining about his asthma. The fourth statement is of a group of males showing the investigator the route they believe Mr. Gray used while the police were chasing him. As noted, this information has little relevance to the actual legal issues and goes only to show background of what happened leading up to the relevant conduct.

(c) One-hundred and twenty-three pictures: these are simply pictures of the area around Gilmor Homes taken after the incident. A Google Earth tour would show the same thing.

B. The State's supplemental disclosure dated August 19

This disclosure contained the following:

1. Additional police reports: the Defendants refer to these reports as "supplemental witness interviews," but in reality they consist of the same reports disclosed on August 6 noting that statements already disclosed were in fact taken (one of these reports is dated July 27, so it did not even exist at the time of initial discovery).

2. Special Investigations Unit Report: this report detailed a BPD effort to research any prior insurance claims by Mr. Gray, but the report shows that Mr. Gray in fact filed no such claims at all, much less any claims related to injuries in police custody.

3. LOTUS notes: these notes detail BPD follow-up actions from the period of April 30-July 30, including notes about meetings with defense counsel, about which the Defendants can certainly not claim lack of knowledge.

4. A letter to President Obama: this document is a letter from a person with no known affiliation to the case written to President Obama that mentions the "Freddie Gray" case but then discusses in remaining part two purported historical incidents of demonic possession, the relevance of which can be known only to the author, as the State can discern none. Nevertheless, the State disclosed the letter in an abundance of caution and in the interests of completeness.

5. A chart showing the organizational structure of the Force Investigations Team: the State disclosed this because BPD disclosed it, but the State can think of no relevant use of this chart.

6. Laboratory technician reports: these reports discuss the location where photographs were taken and where serology swabs were taken. To the extent they are relevant, they were not received by the State until the August 4 file reconciliation and were then promptly disclosed.

7. A report about Donta Allen: the Defendants characterize this report as detailing "Donta Allen's previous contacts with police officers." In reality, the report is about the April 12 arrest of Mr. Allen by certain of the Defendants and is an exact duplicate of the report contained in the original BPD investigative binder disclosed on June 26.

8. Additional canvasing reports: numerous pages of BPD reports listing the locations where BPD detectives left flyers on doors in a fruitless attempt to find additional witnesses. The non-exculpatory value of this speaks for itself.

9. An accident investigation report: this report contains a BPD officer's attempt to calculate the route and speed of the transportation wagon; the report is derived from the information contained within the State's June 26 disclosures and simply does a few unverified mathematical calculations that at best are speculation derived from incomplete data. To the extent the Defendants find this information helpful, they now have it. The State's Attorney first received this report on August 4.

10. Fifteen search and seizure warrants: some of these warrants were executed, some were not. The warrants are for the departmental and personal cell phones of the Defendants. BPD did not provide the State's Attorney with copies of these warrants until August 4. The State notes, however, that the Defendants attached and discussed these same warrants in their July 13 and July 29 *Franks* pleadings (since denied), meaning they had them before the prosecutors did. [4]

C. The State's supplemental disclosure dated August 31

This disclosure contained the following:

1. Evidentiary reports: these reports are simply chain of custody reports, property receipts for evidence submissions, and a submission master-list. The State notes that this is a not

[4] The Defendants also claim that this supplemental disclosure contained information about "Mr. Gray's criminal background." The State has carefully reviewed this disclosure and can find nothing fitting this description. To the extent this claim was not simply another attempt to demonize Mr. Gray, the State notes that background information about Mr. Gray was provided on June 26.

a CDS case, so chain of custody is immaterial. In any event, most of this same information was already provided in pages 451-480 of the second half of the BPD Investigation Binder disclosed on June 26. The remaining reports simply update that disclosure and contain evidence movement logs dated as late as August 27, i.e. they did not exist at the time of the State's initial discovery.

2. A set of documents from Defendant Goodson's locker: as the Defendants recite, this disclosure contained personnel records for a Defendant, copies of general orders and administrative policies, and the 2011 Western District Areas of Concern/Operational Plan document. Far from being new materials, as discussed above, these items were all the products of the search and seizure warrants executed on Defendant Goodson's locker at the Western District and have been available for the Defendants to inspect since June 26. That the State selected a few items to explicitly bring to the Defendants' attention shows the opposite of concealment. The State also provided in this disclosure a few additional BPD reports detailing the execution of those search warrants, but BPD only provided those reports on August 4, and the reports are cumulative of previous disclosures.

D. The State's supplemental disclosure dated September 9

This disclosure contained the following:

1. A curriculum for a law enforcement officers' emergency care course: the State did not receive this curriculum until September 3, having received it from a person the State consulted with as a potential expert on August 31. The State then promptly disclosed this information far in advance of trial. The State consulted this expert as part of the State's

continuing refinement of its trial plan, not as some illicit effort to withhold its expert disclosures.

2. Personnel files of each Defendant: these files are each Defendants' own BPD personnel file. Aside from the obvious lack of prejudice from receiving a copy of a file each Defendant was free to independently review himself or herself, the State disclosed this as a result of negotiated settlement to Ms. Flynn's request for a subpoena for BPD training records. The State only received authorization on September 8 from the BPD custodian of records to release these statutorily confidential documents.

3. Cell phone call records for Defendant Porter: the State only received these records from the service provider on August 20; thus, they could not have been disclosed on June 26.

E. The State's supplemental disclosure dated September 11

The Defendants characterize this disclosure as the one "that most definitely demonstrates the State's discovery violations," insisting that the Deputy State's Attorney misrepresented to the Court the status of the State's prior disclosures at the September 10 hearing when she told the Court that she believed everything discoverable, including the SAO investigator's seven notes, had been disclosed. Def. Supp. at 4. The Defendants conveniently omit the last part of the Deputy's statement to the Court where, upon realizing that she may have misspoken, she specifically told the Court that she would "double-check" to make sure that she was not mistaken as to whether the State had disclosed *seven* notes or *one of* seven notes. After the hearing, the Deputy State's Attorney examined the prior disclosure, as she said she would, realized that she

had been mistaken about the number of notes previously disclosed, and then promptly corrected the mistake. This supplemental disclosure contained the following:

1. Seven note reports taken by a State's Attorney's Office investigator: these notes were all seven of the SAO investigators' note reports, including the one that had in fact already been disclosed on August 6 and that prompted the uncertainty at the September 10 hearing. The notes themselves contained the following:

(a) One note detailed that the SAO investigator had gone to Gilmor Homes on April 14 and spoken to one group of people there who had heard about the incident involving the Defendants and Mr. Gray. None of the people would identify themselves and none of the people would provide a recorded or written statement. The note then details that the investigator later met with a witness who did provide a recorded statement. This person's identity and statement (which the State will not detail in this pleading) were disclosed among the "Civilian Statements" section on page 11 of the State's Initial Disclosures. In other words, the State had already disclosed the substance of the only relevant information discussed in this note.

(b) One note detailed obtaining video footage from a person showing part of the arrest scene. This footage was widely televised by the media before charges were even filed in this case but was also formally included in the State's June 26 disclosure. This note also details that the investigator knocked on 13 doors, receiving 11 no answers, one person who only heard Mr. Gray yelling, and one person who refused to come to the door.

(c) One note detailed obtaining statements from three persons. Each of those persons and their statements were provided by the State on June 26 and are among the disclosures listed in the "Civilian Statements" section on page 11 of the State's Initial Disclosures. The note also details knocking on seven more doors, receiving five no answers, finding two of the homes to be vacant, and finding one person who saw nothing and refused to provide any name.

(d) One note detailed locating two MTA CCTV cameras, two BPD CCTV cameras, and one Wells Fargo ATM camera on the relevant block Pennsylvania Avenue, the footage from all of which was disclosed by the State on June 26 and is listed on page 12 among the "Videos" section of the State's Initial Disclosures. The note also discussed meeting with a person who claimed to have been with Mr. Gray at the time when police officers began chasing him. As discussed extensively above, this person's identity, knowledge, and beliefs have no bearing on the arresting Defendants' Fourth Amendment justification for their actions.

(e) One note detailed that the investigator went to the Western District and obtained BPD documents related to some of the Defendants' arrest of Donta Allen. Again, not only is Mr. Allen's case a separate matter, the incident report for this arrest was provided within the BPD Investigation binder disclosed on June 26. The note also discussed that the investigator verified that the cameras on the Western District station's exterior do not record and are only used for live monitoring. The State disclosed in this same supplemental filing an email from a BPD officer to the SAO investigator confirming that the cameras do not record.

(f) One note detailed the statement by the Gilmor Homes resident that Mr. Gray had been kicking and shaking the van. This note had already been disclosed on August 6 and is extensively discussed above.

(g) Finally, one note detailed that the investigator looked for CCTV cameras along parts of Druid Hill Avenue, finding three locations in the 1200 block. Those cameras that contained footage files that actually worked were disclosed with the State's June 26 discovery packet.

(2) Training records for each Defendant: the State disclosed these records as a result of a negotiated settlement to Ms. Flynn's request for a subpoena for BPD training records. The State only received authorization on September 8 from the BPD custodian of records to release these statutorily confidential documents.

(3) Twenty-seven pages of BPD education and training materials for vehicle procedures, field interviews, investigatory stops, weapons pat-downs, and searches: the State only received authorization on September 8 from the BPD custodian of records to release these statutorily confidential BPD operational documents and had not even considered using these materials until further refining the State's trial plan as the trials drew nearer. Again, to the extent the State could have obtained the documents sooner, this disclosure clearly falls within Rule 4-263's "continuing duty" to disclose, particularly because the documents were obtained in part at the request of Ms. Flynn.

(4) Six recorded interviews, each recorded from two camera angles: these are the recorded interviews of Officers Eugene Breen, Raymond Fields, Trevon Green, Aaron Jackson, Manolo Munuz, and John Rosenblatt. Officer Breen was working in the

Western District on April 12 but was assigned to a different sector and only heard about the incident on the KGA dispatches that were already disclosed on June 26. Officer Rosenblatt was also working in the Western District on April 12 but did not arrive to work until 10:30 in the morning because he had gotten off his prior shift late the previous night; he saw nothing about the incident, as the events had already unfolded by then. Officers Fields, Green, and Munoz are wagon drivers for the Southern, Eastern, and Northern Districts, respectively, and each stated only that they were working on April 12 but never drove their wagons into the Western District that day. Lastly, Officer Jackson gave the statement about Mr. Gray shaking the wagon. The disclosure of this statement has already been discussed—it is not exculpatory and is cumulative of statements from other officers disclosed on June 26. Officer Jackson also mentioned in his statement what he believed was a prior interaction with Mr. Gray on an unspecified past date in which he alleged that he had chased Mr. Gray, who surrendered and was then released without charge, having committed no crime. The Defendants describe this episode as exculpatory for "reasons which, if not patently obvious, will be discussed at the Hearing on this Motion . . . ." Def. Supp. at 6. The State cannot conceive of *any* reason, let alone a patently obvious one, why this episode would have any exculpatory value. If anything, Officer Jackson's actions might have caused Mr. Gray to fear the police and thereby run from the Defendants on April 12, but those actions certainly would not contribute any justification for the Defendants' arrest of Mr. Gray given that the Defendants were neither involved in nor even knew about Officer's Jackson's possible past encounter with Mr. Gray. The only obvious value of Officer's Jackson's statement in this regard is its ability to enable the Defendants to further publicly villainize Mr. Gray's character.

F. The State's supplemental disclosure dated September 22

This disclosure contained the following:

(1) Baltimore City Fire Department radio dispatch recordings: the original recordings of the dispatches about this case were provided on June 26. This version contains those same recordings but includes a computerized voice-over that announces the time and date of the dispatch. This version also contains additional radio channels from April 12 dispatches, none of which have anything to do with this case.

(2) Cell phone certification records: these are business record certifications for cell phone records that were already disclosed. Three of the certifications are dated August 28 and one is dated September 3. The State could not disclose on June 26 that which did not then exist.

(3) DNA validation records: these were disclosed after being specifically requested as supplemental discovery by the Defendants in their September 21 pleading. In other words, the State disclosed the records the very next day, but the State notes that these records are routinely not provided in any case unless specifically requested.

(4) An updated witness list: this witness list contains 46 names. The State notes that the June 26 list contained 32 names. The fact that the State has updated and supplemented the list of witnesses it intends to call constitutes no discovery violation. It merely reflects the State diligently abiding by its discovery obligations as its trial plan is refined.

Conclusion

As the Court can now readily see from this detailed discussion of each of the State's supplemental disclosures, the State has consistently acted in good faith and has disclosed material far above that which Rule 4-263 requires. Far from justifying an inference that the State is withholding *Brady* material, these supplemental disclosures demonstrate that the State has made every effort to disclose anything even arguably helpful to the defense. The State has reviewed, indexed, and disclosed a nearly mind-boggling amount of information in this case in the hope of avoiding inconsequential discovery disputes like this one. Instead, the Defendants, consistent with their prior pleadings, have used their Supplement, not to raise any genuine dispute for the Court to resolve, but merely to serve as a forum for disseminating selected information to the media in their continued attempts to affect public perceptions of this case. Their legal arguments ignore the meaning of *Brady* jurisprudence, misstate the relevant standard for Fourth Amendment analyses, and treat Rule 4-263 as if it erects a barrier to truth rather than a path to it. Like the Defendants' untimely original Motion to Compel, their Supplement provides no grounds for the relief it seeks. The Motion should be denied.

Wherefore, and for the reasons stated in previous pleadings on this matter, the State requests that this Court deny the Defendants' Joint Motion to Compel and for Sanctions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2015, a copy of the State's Response to the Defendant's Supplement to Defendants' Joint Motion to Compel and for Sanctions was delivered to the Defendant's counsel as specified below:

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