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IN THE CIRCUIT COURT
FOR BALTIMORE CITY

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CIRCUIT COURT
BALTIMORE CITY
CRIMINAL DIVISION

STATE OF MARYLAND

v.

OFFICER WILLIAM G. PORTER

Defendant.

CRIMINAL NO. 115141037

...ooOoo...

DEFENDANT RESPONSE TO VARIOUS STATE MOTIONS

Comes now Defendant Officer William Porter, through his counsel, Joseph Murtha and Gary Proctor (hereinafter "Defendant") and respectfully submits this Response to various motions filed by the state on November 12, 2015, as further outlined herein.

STATE'S MOTION ENTITLED "MOTION *IN LIMINE* TO PRECLUDE THE DEFENDANT FROM ATTEMPTING TO CALL THE PROSECUTORS IN THIS CASE AS TRIAL WITNESSES AND FROM ATTEMPT TO CONTROVERT IRRELEVANT ASPECT OF OR RAISE BASELESS ACCUSATIONS ABOUT THE STATE'S ATTORNEY'S PRE-INDICTMENT ACTIONS IN THIS CASE"

The State has filed a pleading, as titled above, which asks for various remedies. Firstly, the state talks about the State's Attorney's pre-indictment actions in this case, and sets out 8 separate things that the defense may seek to introduce. While the state's motion is primarily focused on precluding the defense from calling *prosecutors* to elicit testimony as to the 8 matters, the relief sought is more broad, i.e. "precluding the Defendant from attempting to call prosecutors in this case as trial witnesses and from attempting to controvert

irrelevant aspects of or to raise baseless accusations about the State's Attorney's pre-indictment actions." Id. At 4. Thus, there are actually two separate questions: can the defense elicit testimony as to the matters, and, if yes, can the defense call prosecutors to elicit said evidence. Firstly, taking each subject matter *seriatim*:

[a] The State's Attorney's Office use of its own employees to investigate Mr. Gray's death.

The defense in this case believes it is absolutely fair game to adduce evidence that there was a "rush to judgment" in this case. By the same token, the *lack* of investigation by the State's Attorney's Office is admissible to buttress this point. Counsel cannot count on their fingers how many times they have offered a defense that their client was quickly identified as the culprit, and all other leads and evidence ignored. And not once has this testimony and argument been claimed by the prosecution to be inadmissible. Nor should it be here. As the Court is well aware, on May 1st, Ms. Mosby told the world that:

Over the course of our independent investigation, in the untimely death of Mr. Gray, my team worked around the clock; 12 and 14 hour days to canvas and interview dozens of witnesses; view numerous hours of video footage; repeatedly reviewed and listened to hours of police video tape statements; surveyed the route, reviewed voluminous medical records; and we leveraged the information made available by the police department, the community and family of Mr. Gray.

The findings of our comprehensive, thorough and independent investigation, coupled with the medical examiner's determination that Mr. Gray's death was a homicide that we received today, has

led us to believe that we have probable cause to file criminal charges.

Id. The State's Attorney's Office cannot have its cake and eat it. They have declared to all and sundry that they conducted a thorough and independent investigation, and now seek to stymie a defense that asserts to the contrary.¹ A grand jury subsequent indictment cannot wash clean an investigation that the defense will seek to show sacrificed thoroughness for timeliness.

[b] relationship between prosecutors and their friends, partners or spouses

Officer Porter currently has no intention of delving into these areas and has no objection to the Court granting the motion in that respect. In the unlikely event that counsel seeks to elicit these matters later, the undersigned hereby undertakes to approach the bench and flag the issue for the Court, prior to bringing up such matters in open court.

[c] civil actions against prosecutors involving the underlying events of this case

Officer Porter currently has no intention of delving into these areas and has no objection to the Court granting the motion in that respect. In the unlikely event that counsel seeks to elicit these matters later, the undersigned hereby

¹ To the extent that the state now seeks to be relieved of the truthfulness of Ms. Mosby's words, they nevertheless remain admissible as a Statement by a Party-Opponent. Md. Rule § 5-803(a).

