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STATE OF MARYLAND

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IN THE
CIRCUIT COURT FOR
BALTIMORE CITY

v.

WILLIAM PORTER

CIRCUIT COURT
BALTIMORE CITY
CRIMINAL DIVISION

CASE No. 115141037

* * * * *

STATE'S RESPONSE TO DEFENDANT'S MOTION FOR SUBPOENA FOR TANGIBLE EVIDENCE

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 pursuant to Rule 4-264 responds as follows to the Defendant's Motion for Subpoena for Tangible Evidence filed on October 6, 2015, seeking a pretrial subpoena duces tecum directed to the Bon Secours Hospital:

The Defendant requests that this Court issue a pretrial subpoena duces tecum pursuant to Rule 4-264 to obtain from the Bon Secours Hospital "any and all hospital, clinic, medical records, and charts from pertaining [*sic*] to" the victim in this case, Mr. Freddie Gray, "including, but not limited to," a demand for "all outpatient records," "therapy notes, all assessments, [and] all records of consultation including evaluation and treatment," among the many other broad categories of records and information sought to be compelled. It is a well-documented fact that following the arrest underlying this case, Mr. Gray was found injured and unconscious in a police transport wagon on April 12, 2015. He was transported to the University of Maryland Medical Center for emergency treatment and remained there until his death on April 19, having never regained consciousness.

This Motion, therefore, asks the Court to issue a pretrial subpoena duces tecum for information that is both irrelevant and privileged. Rule 4-264 plainly permits pretrial compelled

production only of records “which may constitute or contain evidence relevant to the action” and which are “not privileged.” The Court of Appeals has instructed that “[w]hen relevance is at issue in criminal discovery disputes, the standard is the same as for civil actions: ordinarily the information or documents should be deemed relevant if it reasonably is calculated to lead to the discovery of admissible evidence and [its] probative value is not outweighed by any privacy interests, confidentiality, privilege, or other conflicting interest, including the burden of production.” *Cole v. State*, 378 Md. 42, 62-63 (2003). Moreover, the Court has held, “Rule 4-264 specifically excludes the discovery of privileged information” *Goldsmith v. State*, 337 Md. 112, 122 (1995); *accord State v. Johnson*, 440 Md. 228, 239-40 (2014).

Not only does the Defendant’s request fail to specify a date range limited to the period following Mr. Gray’s in-custody injuries, the Defendant demands categories of records about outpatient treatment, therapy, and consultations that unquestionably could have no bearing on the medical treatment of a person who never regained consciousness. These requested records are not even conceivably relevant, and the Defendant makes no attempt to argue relevance *at all*. He simply makes the bare proffer that “[t]his case involves the investigation into the death of Freddie Gray on or about April 19, 2015,” and that “[i]t is the belief of undersigned counsel that the information from the Bon Secours Hospital will be relevant and necessary to the defense in this case.” Def. Mot. at 1.¹ This proffer does not begin to meet the first half of *Cole*’s standard of being “reasonably calculated to lead to the discovery of admissible evidence,” much less the second prong of showing why the value of the records he seeks is not outweighed by Mr. Gray’s privacy interests, particularly in light of the strict privacy rules surrounding medical records

¹The State also notes that the Defendant has filed three other Motions seeking identical subpoenas directed to three more major hospitals in Baltimore City, effectively seeking to cast a net over the entire City in an obvious effort to fish for any possible information with which to further villainize the victim in this case.

under the federal Health Insurance Portability and Accountability act of 1996 (HIPAA) and the corresponding protections under Maryland's Health General Article, Title 4, Subtitle 3.

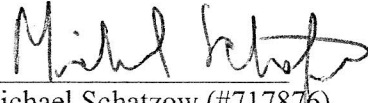
Furthermore, the Defendant's broad demand for "therapy notes, all assessments, [and] all records of consultation including evaluation and treatment," would clearly embrace privileged records under §§ 9-109 and 9-121 of the Courts and Judicial Proceedings Article. Though Mr. Gray is no longer able to speak for himself, the State, being both a "party" to this proceeding within the terms of Rule 4-264 and an advocate for all persons entitled to the law's protections, requests that this Court deny the Defendant's attempt to seek plainly irrelevant and privileged patient information. The Motion's overbroad demands exceed the limited pretrial discovery power Rule 4-264 authorizes.

In the alternative, if the Court is inclined to issue the requested subpoena duces tecum, the State requests pursuant to Rule 4-266(c) that the subpoena only be complied with before this Court and that examination of the compelled records be held with no one present except the Parties and their attorneys so that the Defendant can demonstrate as to each document the lack of privilege and a probative value outweighing Mr. Gray's privacy interests in his medical history.

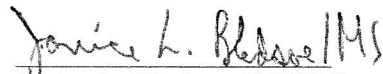
Wherefore, the State requests that this Court deny the Defendant's Motion for Subpoena for Tangible Evidence or, if the Court does issue the proposed subpoena, that, in the alternative, the Court grant the protections herein requested.

Respectfully submitted,

Marilyn J. Mosby



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CERTIFICATE OF SERVICE

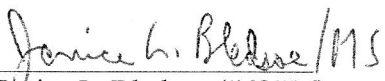
I hereby certify that on this 13th day of October, 2015, a copy of the State's Response to the Defendant's Motion for Subpoena for Tangible Evidence was hand-delivered to:

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