STATE OF MARYLAND	*	IN THE
Plaintiff	*	CIRCUIT COURT
v.	*	FOR
ALICIA WHITE	*	BALTIMORE CITY
Defendant	*	Case No. 115141036 (Filed Under Seal)

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2016 FEB -1 P 2:27
CRIMINAL DIVISION

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DEFENDANT'S RESPONSE TO STATE'S
MOTION FOR APPROPRIATE RELIEF

Defendant Alicia White, through her counsel, submits this response to the State's Motion for Appropriate Relief and states in support of:

Introduction

On October 14, 2015 the Court granted Defendant's Motion to Compel Discovery and ordered the State to "provide counsel for the [Defendant], as officers of the court, for use in their preparation for trial, with copies of any and all documents pertaining to the investigation and prosecution of the [Defendant], with the exception of attorney work product items created after May 1, 2015." Defendant's counsel was allowed by the State to review all the documents covered by the Court's Order between the dates of October 27, 2015 through November 4, 2015. During counsel's review of the discovery, defense counsel noted to the State the several pieces of discovery with which they would be requesting copies of. On November 17, 2015, the State sent a letter to all defense counsel requesting what specific discovery was requested to be copied following the discovery review. (See Exhibit One). On December 10, 2015, defense counsel sent correspondence

to the State with an enumerated list of all the discovery they were requesting a copy of, in addition to the previously made request for the copies. (See Exhibit Two). The letter requested that the documentation be provided no later than December 23, 2015. At this time the requested copies have not been received from the State. On January 15, 2016, the State filed a Motion for Appropriate Relief requesting the Court review certain documents in camera and order that copies of the documents need not be provided to the Defendant's counsel.

Argument

The issue the State attempts to relitigate in their Motion for Appropriate Relief has already been argued and ruled upon by the Court in this matter. The Court has already ordered that the State provide the Defendant with copies of any and all documents pertaining to the prosecution of the Defendant with the exception of the attorney work product. The State writes in their motion, "[f]or a period commencing on October 27 and ending on November 4, the State made available to defense counsel **all of the documents covered by the Court's Order**." *Id.* at 1. Pursuant to the Court's Order, the documents were made available for the defense counsel's viewing at the State's Attorney's Office. According to the State's own express language, these documents are "covered by the Court's Order." *Id.* at 1. The State has thus conceded that the documents fall within the Court's order granting access to copies. Now, the State refuses to provide defense counsel with physical copies of these same documents; and thus, the State now seeks to violate the Court's Order by avoiding the plain language of the Order.

For the State at this late juncture in the case to now say the requested documents do not fall into the Court order is disingenuous and an attempt to delay the Defendant's ability to prepare for trial. The Court ordered the State to "provide counsel for the [Defendant], as officers of the court, for use in their preparation for trial with **copies** of any and all documents pertaining to the investigation and prosecution of the [Defendant], with the exception of attorney work product items created after May 1, 2015." Thus, pursuant to the Order, the State must provide undersigned counsel with physical copies of any and all documents that the State allowed defense counsel to view between the period commencing on October 27 and ending on November 4 – which included the documents sought herein. As such the Defendant asks that the Court abide by the original ruling, deny the State's Motion for Appropriate Relief and compel the State to provide the Defendant with the requested information, including the enumerated documents listed in the State's Motion.

In an abundance of caution if the Court is inclined to consider the State's arguments, the Defendant provides the following supplemental arguments in addition to those previously made in Defendant's initial Motion to Compel.

A. <u>The documents listed in section A of the State's Motion for Appropriate (A0001-A231) do not constitute attorney work product and/or executive deliberations as the documents are products of the State's Attorney's Office's separate and independent investigation into the Defendant's case and thus must be provided to the Defendant as previously ordered by the Court.</u>

The first set of documents the State attempts to supersede the Court's Order in their request to the court to not allow Defendant's counsel to obtain copies of, contains information which they believe to be "classic attorney opinion work product and/or executive deliberations." St. Mot. for Appr. Rel., 2. The State however, concedes that the

listed documents were all created prior to the charges being filed in this case. As such the documents qualify as pre-charging investigative information that as the Court has previously ruled is subject to heightened disclosure requirements.

The Office of the State's Attorney's acted as investigative officers prior to filing charges, thus, any attorney work product argument is inapplicable. The entirety of the State's actions prior to the charging of the Defendant were solely that of investigative officers. The State cites *Kalina v. Fletcher*, 522 U.S. 118, 130 (1997) for the proposition that "even during the pre-charging stage, *some* of a prosecutor's actions are '*the work of an advocate*' and, therefore, may constitute classic attorney opinion work product that is privileged from adversarial discovery." St. Mot. for Appr. Rel., 2–3 (emphasis supplied in original). However, any attempt to argue that the State was acting as an advocate and not an investigator is quashed by the State's Attorney, Marilyn Mosby's own words in her press conference given on May 1, 2015. Ms. Mosby publicly stated that a "comprehensive, thorough, and independent investigation" was done by her Police Integrity Unit, who "worked around the clock; 12 and 14 hours days, to canvas and interview dozens of witnesses, view numerous hours of video footage, repeatedly reviewed and listened to hours of police videotaped statements, surveyed the route, reviewed voluminous medical records, and leveraged the information made available to us by the Police Department, the community, and the family of Mr. Gray" (See Defendant Exhibit Three). It is also clear that there was a separate investigation done from the discrepancy between the Baltimore Police Department's view of the Defendant, Sergeant Alicia White as a witness, when compared to the State's investigation which caused Sergeant White to be viewed as a

suspect.[1] This discrepancy only further calls for a complete review of all of the documentation surrounding the State's investigation to see how and why they came to a different conclusion then the Baltimore City Police Department's investigative team.

The State begins their argument by noting their "full understanding and respect for the Court's ruling." However, they then immediately attempt to challenge the Court's ruling by attempting to manipulate case law in order to bolster their request to invalidate the order. The State cites cases that center on the issue of whether a prosecutor's actions are entitled to absolute or qualified immunity. *See Id. citing Kalina*, 522 U.S. 118; *Imbler v. Pachtman*, 424 U.S. 409, 430–31 (1976). The State cites two 42 U.S.C. § 1983 cases, *Kalina* and *Imbler*, to analogize a prosecutor's entitlement to absolute immunity protection to instances in which the prosecutor is acting as an advocate, and thus, their work product is protected from discovery. St. Mot. for Appr. Rel., 2–3. Conversely, the State uses *Kalina* and *Imbler* to analogize situations, in which a prosecutor is entitled to qualified immunity protection, to instances in which a prosecutor is acting as an investigative officer, and thus their work product would *not* be protected from discovery. *Id.*

Assuming *arguendo* that the State's interpretation is correct and applicable, the case law does not support the State's proposition that they were acting as advocates instead of investigative officers during the relevant time period. In *Kalina*, the Supreme Court of the United States held, in determining immunity, "we examine 'the nature of the function

[1] According the 24 hour report drafted by the FIT Team investigator, Sergeant Tashaawna Gaines, Sergeant White was listed as an "Officer Witnessing" and not an "Officer Involved" as her co-Defendant's were listed as. (See Exhibit Four). Therefore, it can be gleamed that the initial investigation done by the Baltimore City Police Department led to the conclusion that Sergeant White was merely a witness and not a suspect as she was seen by the State's Attorney's investigation.

performed, not the identity of the actor who performed it.'" *Kalina v. Fletcher*, 522 U.S. 118, 127 (1997) (citing *Forrester v. White*, 484 U.S. 219, 229 (1988)) (footnote omitted). The Supreme Court further held in *Buckly v. Fitzsimmons*, that "when a prosecutor performs the investigative functions normally performed by a detective or police officer, it is 'neither appropriate nor justifiable that, for the same act immunity should protect the one and not the other.'" 509 U.S. 259 at 276 (citing *Hampton v. Chicago*, 484 F.2d 602, 608 (C.A.7 1973)). It is clear from the statements made by the State's Attorney that the office conducted separate independent investigation which changed their roles from advocate to investigator as they were performing functions normally performed by law enforcement. The requested documents prepared by the State's Attorney's Office can be compared to the lotus notes taken by police investigators during their investigations into a case.

The State at no point denies that they conducted a separate investigation, instead they attempt to hide behind the veil of attorney work product in order to evade the Court's order. The State next cites *Hickman v. Taylor*, 329 U.S. 495, 510 (1946), a civil case applying the Federal Rules Civil Procedure, in attempt to bolster their argument that the documents are work product and not subject to discovery. However, the State yet again attempts to utilize civil case law that is not binding to the matter at hand but even when properly applied to the case is in favor of production. In *Hickman,* the Supreme Court found that discovery was not warranted in relation to those specific facts, however what the State fails to address in their motion is that the case also holds that "all written materials obtained or prepared by an adversary's counsel with an eye toward litigation are not necessarily free from discovery." Id. at 511. The Court explicitly held that

> where relevant and non-privileged facts remain hidden in an attorney's file and where production of those facts is essential to the preparation of one's case, discovery may properly be had. Such written statements and documents might, under certain circumstances, be admissible in evidence or give clues as to the existence of location of relevant facts. Or they might be useful for purposes of impeachment or corroboration.... A burden rests on the one who would invade that privacy to establish adequate reasons to justify production through a subpoena or court order. Id at 512.

In this case, the Defendant has more than adequately established reasons to justify the production of the discovery, as a court order has already been granted in this matter. That in addition to the fact the materials requested were part of an ongoing independent investigation, the facts of the Defendant's case can clearly be distinguished by those in *Hickman* and the Court was correct in granting the order to compel.

The State's final attempt to convince the Court that the material is not discoverable as it is protected by executive privilege provided to the State's Attorney. The State cites *Hamilton v. Verdow*, which once again is a civil, not a criminal matter. In Hamilton, the court addresses the executive privilege but also states that "the privilege is not an absolute one," a fact that the State conveniently leaves out. Id at 563. The Court held that in criminal trial courts have used "a balancing process weighing the need for confidentiality against the litigant's need for disclosure and the impact of nondisclosure upon the fair administration of justice." Id 563. If the balancing test were to be applied in this case, the need for disclosure far outweighs any need for confidentiality as the Defendant has already been privy to the information in the documents however in order to properly use the documents in preparation for trial and any pretrial hearings, the documents need also be produced.

Therefore, when the case law cited by the State is properly applied to the case at hand, it supports the disclosure of the documents and as previously ruled upon by this Court, any and all documents regarding to that investigation specifically those enumerated by the State in Section A of the Motion for Appropriate Relief are not protected from disclosure to the Defendant and must be turned over.

B. The documents listed in section B of the State's Motion for Appropriate, B0001-B069), documents related to the interaction between the Office of the State's Attorney and the Press are documents used and a part of the State's separate and independent investigation into the Defendant's case and therefore fall under the Court's Order to Compel and must be provided to the Defendant.

The State's position that the documents related to the interaction between the Office of the State's Attorney and the Press are not relevant, admissible or helpful and serve no purpose related to the defense counsel's representation of our client is the State's opinion. The investigation done by the State and specifically addressed documents in this section are important to the defense counsel to show; the State's interaction with the media, the State's focus on the investigation, the pandering to the community along with the level and focus of the State's investigation. The opinion of the State that the requested documents are not relevant, admissible or helpful has absolutely no bearing on the fact that the documents, which were provided for review by the defense counsel, are part of the State's separate and independent investigation of the instant case and must be disclosed. The State fails to address its obligation under the Maryland Discovery Rules. The State seeks to avoid Maryland Rule 4-263 "Discovery in Circuit Court," by failing to provide copies of

documents "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."

For the reasons stated above as well as the previous expounded argument regarding what the State believes to be the relevant case law on the matter, the requested documents are part of the State's investigation into the matter and must be ordered and copied to the Defendants Attorney.

C. The documents listed in section C of the State's Motion for Appropriate (C001-C034), specifically the State's Attorney Marilyn Mosby's May 1, 2015 public schedule and draft statements are documents made while the State was not acting as an advocate and therefore must be turned over to the Defendant.

When the State's Attorney, Marilyn Mosby, decided to make a public statement during a press conference regarding the case, she abandoned her role as an advocate in the case and thus all documents related to that public statement are not attorney work product and are documents relating to her and her office's independent investigation into the case. The Supreme Court expressly held in *Buckley v. Fitzsimmons*, 509 U.S. 259, 276–78 (1993) that the prosecutor was not acting as an advocate when he held a press conference, and thus was not entitled to absolute immunity. The State argues that actions that are covered by absolute immunity are synonymous with actions as an advocate and thus any work product is not discoverable. Subsequently, under that same theory, any actions that are not entitled to absolute but merely qualified immunity, are not the actions of an advocate and thus any documents as a result of those actions must be disclosed. Accordingly, qualified immunity applies to the State's actions leading up to and during Ms. Mosby's press conference on May 1, 2015; and thus, under the State's logic, this evidence is subject to discovery as the

State was acting as investigating officers, not advocates and must be ordered copied and turned over to the Defendant.

D. The documents listed in section D of the State's Motion for Appropriate (D001-D123), drafts of Statement of Probable Cause used in the Application for the Statement of Charges originally filed in District Court are admissions of a party-opponent and therefore must be provided to the Defendant.

The fourth group of documents the State is attempting to keep the Defendant from obtaining copies of, is the multiple drafts of the Statement of Probable Cause used in the Application for the Statement of Charges originally filed in the District Court. The Defendant is entitled to these documents because they constitute admissions by a party-opponent as defined by Md. Rule 5-803(a)(1) or alternatively Md. Rule 5-803(a)(4). Md. Rule 5-803(a)(1) excludes from the hearsay rule a statement by a party-opponent when the statement is offered against a party and is "[t]he party's own statement, in either an individual or representative capacity." Md. Rule 5-803(a)(4) excludes from hearsay a statement by a party-opponent when the statement is offered against a party and is "[a] statement by the party's agent or employee made during the agency or employment relationship concerning a matter within the scope of the agency or employment."

The State in *State of Maryland v. Sergeant Alicia White* is unquestionably Defendant Sergeant White's party-opponent. The Baltimore City State's Attorney's Office is the agency responsible for representing the State's interest in criminal matters within the City of Baltimore, ostensibly serving as the voice of the state in those matters. Statements made by that Office in the course of the investigation and prosecution of Defendant Sergeant White are therefore statements of a party-opponent.

The principle "that government agents are traditionally unable to bind the sovereign simply does not apply to prosecutors." *Bellamy v. State*, 403 Md. 308, 327 (2008). "Not only are prosecutors authorized to speak for the government in criminal cases, but they can also unquestionably bind the government on a range of legal matters through, for example, stipulations and plea agreements." *Id.* at 327 (quoting Anne Bowen Poulin, *Party Admissions in Criminal Cases: Should the Government Have to Eat Its Words?*, 87 Minn. L. Rev. 401, 412 (2002)). "All of the motions, filings, pleadings, and arguments (or lack thereof) made by a prosecutor in a criminal case may serve to bind the government to a course of action or outcome." *Bellamy*, 403 Md. at 327-28. In fact, "[t]here are many opportunities for a prosecutor to bind the government in the course of a criminal trial." *Id.* (citing *Giglio v. United States*, 405 U.S. 150, 154 (1972)). While the Baltimore City State's Attorney's Office may or may not have bound the State to positions or contentions expressed in the documents addressed in the State's motion, that Office has made statements rightfully attributable to the State.

The drafts of the Statement of Probable Cause in support of the arrest warrant, which was later given to Major Samuel Cogen to be signed, should be considered such statements. After a thorough review of all documentation provided by the State in the course of discovery, the investigative role of Major Samuel Cogen and the Baltimore City Sheriff's Department was limited to two items:

1.) Major Cogen's drafting an inapplicable survey of Maryland knife law for use by the State despite the fact that Mr. Gray was arrested for, and ultimately charged with violation of the Baltimore City Ordinance.

2.) Major Cogen's signing of the Statement of Probable Cause in support of the arrest of Defendant Sergeant White and the other defendant Officers.

Because Major Cogen, upon information and belief, had not taken any other action in the investigation of Defendant Sergeant White, Major Cogen was completely dependent upon the information put before him by the Baltimore City State's Attorney's Office in the drafted Statement of Probable Cause. Knowing that Major Cogen would be signing the drafted Statement of Probable Cause under penalty of perjury, the members of the Baltimore City State's Attorney's Office who drafted this statement would be proffering the truth of the information contained within to Major Cogen. This proffer of truth should be just as attributable to the earlier drafts as it was to the final.

The State's contention that drafts of the Statement of Probable Cause should not be produced because they contain the mental impressions or attorney work product ring hollow. A Statement of Probable Cause is the statement of a witness who has knowledge of facts. The mental impressions of the State's lawyers would not come into play unless the supposed witness's statements are really the creative product of the attorneys. By the State's rationale, the State's attorneys in this case were really the witnesses to the factual allegations contained in the Statement of Probable Cause.

Indeed, when viewed in light of the Supreme Court's complete analysis on this issue (as opposed to the cherry-picked and altered quotation in the State's Motion), it is clear that the prosecutors acted as witnesses, beyond the role of advocates, in drafting the Statement of Probable Cause in this case. Picking up where the State's Motion left off in quoting from *Kalina v. Fletcher*:

> But that judgment could not affect the truth or falsity of the factual statements themselves. Testifying about facts is the function of the witness, not of the lawyer. No matter how brief or succinct it may be, the evidentiary component of an application for an arrest warrant is a distinct and essential predicate for a finding of probable cause. Even when the person who makes the constitutionally required "Oath or affirmation" is a lawyer, the only function that she performs in giving sworn testimony is that of a witness.

522 U.S. 118, 130-31 (1997). "Under *Kalina*, a prosecutor acts as an advocate in supplying legal advice to support an affidavit for an arrest warrant and is entitled to absolute immunity as long as a prosecutor does not personally attest to the truth of the evidence presented to a judicial officer, or exercise judgment going to the truth or falsity of evidence." *Spivey v. Robertson*, 197 F.3d 772, 776 (5th Cir. 1999). Because the State simply presented the facts the prosecutors deemed relevant for a rubber stamp from Major Cogen, whose only knowledge came from the State and was thus an incompetent witness, the prosecutors themselves acted as witnesses.

To the extent that a previous amended version of the Statement of Probable Cause merely contained an edit for syntax or spelling error, production of a potentially irrelevant document to Defendant Sergeant White would not constitute any prejudice to the State. However, to the extent any versions contain substantial alterations of the factual allegations, these previous versions contain at least prior admissions by a party-opponent, and potentially prior inconsistent statements by a party-opponent.

For the foregoing reasons, Defendant Sergeant White in entitled to copies of the drafts of the Statement of Probable Cause in support of the warrant to arrest Defendant Sergeant White.

E. The documents listed in section E of the State's Motion for Appropriate (E001-E103), miscellany of emails and attachments largely dealing with the City's response to the April unrest, are not shielded from disclosure and fall under the Court's Order to Compel and must be provided to the Defendant.

In Section E. of the State's motion for appropriate relief, entitled "A miscellany of emails and attachments largely dealing with the City's response to the April unrest," the State writes, "[t]he State cannot even fathom why defense counsel would request these items as additional discovery given that they further no legitimate defense purpose and are only tangentially related to the case." St. Mot. for Appr. Rel., p. 13. However, the State's argument fails to address the governing Order in this matter, this Honorable Court's Order dated October 14, 2015.[2]

As previously argued, in *Kalina*, the Supreme Court of the United States held, in determining immunity, "we examine 'the nature of the function performed, not the identity of the actor who performed it.'" *Kalina v. Fletcher*, 522 U.S. 118, 127 (1997) (citing *Forrester v. White*, 484 U.S. 219, 229 (1988)) (footnote omitted). The Supreme Court continued, "[t]his point is perhaps best illustrated by the determination that the senior law enforcement official in the Nation—the Attorney General of the United States—is **protected only by qualified, rather than absolute, immunity when engaged in the performance of national defense functions rather than prosecutorial functions**. *Id.*

[2] In addition, the State again fails to address its obligation under the Maryland Discovery Rules. The State seeks to avoid Maryland Rule 4-263 "Discovery in Circuit Court," by failing to provide copies of documents "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."

(citing *Mitchell v. Forsyth,* 472 U.S. 511 (1985). The State, has admitted that they were engaged in a **"law enforcement purpose," a "domestic riot control purpose," to "curtail[] civil unrest"** and **"end the rioting"** in presenting a public speech expressing the charges against the defendant. St. Opp. to Def. Joint Mot. to Dismiss for Prosecutorial Misconduct, or in the Alternative, for Sanctions, p. 6–7. Defense counsel avers that the State had the same purposes during their investigation before charges were filed. Therefore, the documents relating to the "City's response to the April unrest" are properly discoverable by the defense and must be copied to Defendant's counsel.

F. <u>The documents listed in section F of the State's Motion for Appropriate (F0001-F092), confidential personnel records of the Baltimore Police Department Internal Affairs Division for Defendants Nero, Rice, Miller, Goodson, and Porter as well as Officers Novak and Wood, at this time have not been requested by the Defendant, however any potential impeachment information contained within them must be disclosed.</u>

The State requests that the confidential personnel records of the Baltimore Police Department Internal Affairs Division for Officers Nero, Rice, Miller, Goodson, Porter, Novak and Wood not be disclosed to the Defendant. At this time the Defendant has not made any specific requests for this documentation. However, since the State has made it clear that the documents are within their control and possession it is the Defendant's position that any and all possible impeachment evidence contained within the files regarding the listed officers must be disclosed to the Defendant pursuant to Maryland Rule 4-263 (d)(6), whether or not they believe the information would be admissible. The Defendant is well aware that a court order is necessary to release the actual contents of the files, and as such requests that a summary of any and all impeachment information

regarding the officers they intend to call as witnesses be provided so that the Defendant may file a Motion requesting a Court order to review and disclose the files. As the State has made it abundantly clear that Officer Porter is a necessary witness in their case against the Defendant, any impeachment evidence against him is highly relevant to the Defendant's case as well as any of the other officers that the State intends to call as witnesses in the Defendant's case. Therefore, in regards to any impeachment information contained within the Baltimore Police Department Internal Affairs files for the listed officers, the Court should deny the State's Motion for Relief and compel the State to provide any impeachment information contained within.

Conclusion

The State has not presented a compelling reason for the Court to abandon the previously issued order and prevent the State from complying with the order. The State misquotes and misunderstands the case law they attempt to use to reinforce their argument and in fact when properly applied to the relevant facts of the Defendant case, the law cited by the State supports disclosure of requested documents. Additionally, the State relies on their belief that the evidence is irrelevant and inadmissible and thus not privy for disclosure, however their logic fails to address the standard for disclosure according to the Maryland Rules. The State's decision to conduct their own independent investigation prior to charging makes all the listed documents discoverable and must be disclosed pursuant to the relevant case law as well as the Court's order. Finally, the Defendant has requested subpoenas for all the prosecutors involved in the investigation in this matter, the documents are necessary in order provide material for proper cross examination of the

prosecutor witnesses during both the pretrial hearing requested pursuant to Defendant's Response to State's Motion in Limine to Preclude Defendant from Calling Prosecutors as Witnesses during Defendant's Trial and Request for an Evidentiary Hearing as well as at trial.

WHEREFORE, for the reasons stated above, the Defendant respectfully requests that the Court enforce the original Order to Compel the State to provide copies of the listed discovery and DENY the State's Motion for Appropriate Relief. In the alternative, Sergeant White requests that this Court conduct an *in camera* review of the documents in question to determine whether they should be provided to Defense counsel.

Respectfully submitted,

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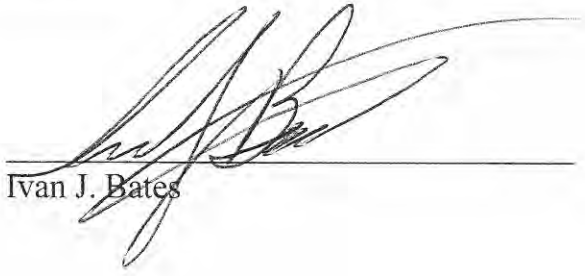
Counsel for Sergeant Alicia White

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February 2016, a copy of the foregoing Response to State's Motion for Appropriate Relief was sent by first class mail, postage prepaid to:

Michael Schatzow, Chief Deputy State's Attorney
Office of the State's Attorney for Baltimore City
120 East Baltimore Street
Baltimore, Maryland 21202



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RE: State v. Goodson, et al

Dear Defense Counsel:

As everyone continues to prepare for trial, if there are any documents that you do not have but that you have either referenced in a motion or have seen as a result of a file review with a witness (defense or state), please call me. The State will make every effort to provide you with a copy of the document. The State is providing the enclosed documents as a courtesy only and does not believe the documents are discoverable pursuant to Maryland discovery rules:

1. OCME Investigative Report
2. 712 Mosher

Additionally, the State discloses the following potential witnesses:

1. Agent John Bilheimer (previously disclosed as a Defense witness)
2. Sierra Warren (previously referenced in BPD Investigative Binder 1)
3. Major Kimberly Burress (BPD)
4. Kevin Marcus (BPD)

Respectfully,

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December 10, 2015

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Assistant State's Attorney
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120 E. Baltimore Street, 9th Floor
Baltimore, Maryland 21202

RE: State vs. Alicia White
Case No. 115141036

Dear Ms. Bledsoe and Mr. Schatzow:

On November 4, 2015, my office completed our review of the State's Discovery file. During that review, we noted several pieces of discovery in which we were requesting a copy. The specific requests were made known to the State during the discovery review. At this time, we have not yet received copies of any of the documentation requested during the discovery review.

Please let this letter serve as an additional written request for the discovery specified during the discovery review. In reference to your letter dated November 17, 2015, please find attached to this letter an enclosure listing the specific documentation that is requested. In addition to the information requested at the review and in the enclosed list, we would also like to request at this time a copy of any and all emails received and exchanged with the Baltimore Police Department during their investigation into this matter.

Please forward all requested documentation as well as any other necessary documentation and information you may have pertaining to the above-referenced case to our office no later than December 23, 2015.

Feel free to call my office with any questions or concerns you may have regarding this request. Thank you in advance for your cooperation in this matter.

Very truly yours,

IVAN J. BATES

IJB:ml

DEFENDANT'S EXHIBIT
2

The Defendant requests the following documentation as of December 10, 2015:

1. Zachary Novak pdf
2. Zachary Novak J-265
3. W. Williams hand written notepad
4. Witness list (word and pdf) 9/18/15 & 10/26/15
5. Wisner Van
6. Whites states supplemental disclosure 8/19/15
7. White initial discovery motion 6/22/15
8. What happened inside police van transcript 4/16/15
9. Western Notes 4/20/15
10. Warrant for the police Officers 10/28/15
11. Wagon photos luminal 5/18/15
12. Wagon photos 4/24/15
13. Wagon training schedule 8/4/15
14. Wagon south through Mount and Pressman 4/21/15
15. Wagon South on Mount to pressman 4/21/15
16. Wagon dimensions from OCME report 9/16/15
17. Wagon dimensions from BDP 9/16/15
18. Wagon at 1200 block Druid Hill Ave 10/28/15
19. Video spotlight FG at Baker and Mount Street 6/19/15
20. Version 2 10/28/15
21. Van 10/28/15
22. Updates 10/28/15
23. Untitled 10/28/15
24. Transcribed statements 6/22/15
    a. Alicia White (2)
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BALTIMORE CITY STATE'S ATTORNEY'S OFFICE

PRESS CONFERENCE

WHO: State's Attorney Marilyn J. Mosby

WHAT: Press Conference regarding Freddie Gray

WHEN: Friday, May 1, 2015

WHERE: War Memorial Building
101 N. Gay Street
Baltimore, MD 21202
(Across from City Hall)

TIME: 10:30a.m.

Transcriptionist: Kelly A. Taylor, CET-745

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DEFENDANT'S EXHIBIT
3

1 PRESS CONFERENCE
2 BALTIMORE CITY STATE'S ATTORNEY MARILYN MOSBY
3 MS. MOSBY: Good morning. First and foremost, I
4 need to express publically my deepest sympathies for the
5 family and the loved ones of Mr. Freddie Gray. I had the
6 opportunity to meet with Mr. Gray's family to discuss some
7 of the details of the case and the procedural steps going
8 forward. I assured his family that no one is above the
9 law and that I would pursue justice on their behalf.
10 To the thousands of city residents, community
11 organizers, faith leaders, and political leaders that
12 chose to march peacefully throughout Baltimore, I commend
13 your courage to stand for justice. I also commend the
14 brave men and women, both in uniform and out, who have
15 stepped up Monday night to protect our communities from
16 those who wish to destroy it.
17 As the City's Chief Prosecutor, I've been sworn to
18 uphold justice and to treat every individual within the
19 jurisdiction of Baltimore City equally and fairly under
20 the law. I take this oath seriously. And I want the
21 public to know that my administration is committed to
22 creating a fair and equitable justice system for all. No
23 matter what your occupation, your age, your race, your
24 color, or your creed. It is my job to examine and
25 investigate the evidence of each case and apply those

1 facts to the elements of a crime in order to make a
2 determination as to whether individuals should be
3 prosecuted. This is a tremendous responsibility, but one
4 that I sought and accepted when the citizens of Baltimore
5 City elected me as the State's Attorney. And it's
6 precisely what I did in the case of Freddie Gray.
7 Once alerted about this incident on April 13th,
8 investigators from my Police Integrity Unit were deployed
9 to investigate the circumstances surrounding Mr. Gray's
10 apprehension. Over the course of our independent
11 investigation in the untimely death of Mr. Gray, my team
12 worked around the clock; 12 and 14 hour days, to canvas
13 and interview dozens of witnesses, view numerous hours of
14 video footage, repeatedly reviewed and listened to hours
15 of police videotaped statements, surveyed the route,
16 reviewed voluminous medical records, and we leveraged the
17 information made available to us by the Police Department,
18 the community, and the family of Mr. Gray.
19 The findings of our comprehensive, thorough, and
20 independent investigation, coupled with the Medical
21 Examiner's determination that Mr. Gray's death was a
22 homicide, which we received today, has led us to believe
23 that we have probable cause to file criminal charges. The
24 Statement of Probable Cause is as follows:
25 On April 12th, 2015 between 8:45 and 9:15 a.m. near

1 the corner of North Avenue and Mount Street, Lieutenant
2 Brian Rice of the Baltimore Police Department, while on
3 bike patrol with Officers Garrett Miller and Edward Nero,
4 made eye contact with Mr. Freddie Carlos Gray, Jr. Having
5 made eye contact with Mr. Gray, Mr. Gray subsequently ran
6 from Lieutenant Rice.
7 Lieutenant Rice then dispatched over departmental
8 radio that he was involved in a foot pursuit. At which
9 time bike patrol officers and Nero, Officers Miller and
10 Nero also began to pursue Mr. Gray. Having come in
11 contact with the pursuing officers, Mr. Gray surrendered
12 to Officers Miller and Nero in the vicinity of the 1700
13 block of Presbury Street. Officers Miller and Nero then
14 handcuffed Mr. Gray and moved him to a location a few feet
15 away from his surrendering location.
16 Mr. Gray was then placed in a prone position with his
17 arms handcuffed behind his back. It was at this time that
18 Mr. Gray indicated that he could not breathe and requested
19 an inhaler, to no avail. Officers Miller and Nero then
20 placed Mr. Gray in a seated position and subsequently
21 found a knife clipped to the inside of his pants pocket.
22 The blade of the knife was folder into the handle. The
23 knife was not a switchblade and is lawful under Maryland
24 law.
25 These officers subsequently removed the knife and

1 place it on the sidewalk. Mr. Gray was then placed back
2 down on his stomach. At which time Mr. Gray began to
3 flail his legs and scream as Officer Miller placed Mr.
4 Gray in a restraining technique known as a leg lace while
5 Officer Nero physically held him down against his will
6 until a BPD wagon arrived to transport Mr. Gray.
7 Lieutenant Rice, Officer Miller, and Officer Nero
8 failed to establish probable cause for Mr. Gray's arrest
9 as no crime had been committed by Mr. Gray. Accordingly,
10 Lieutenant Rice, Officer Miller, and Officer Nero
11 illegally arrested Mr. Gray. Upon arrival of the
12 transport wagon driven by Officer Caesar Goodson,
13 Lieutenant Rice, Officer Nero, and Officer Miller loaded
14 Mr. Gray into the wagon. And at no point was he secured
15 by a seatbelt while in the wagon contrary to a BPD general
16 order.
17 Lieutenant Rice then directed BPD wagon to stop at
18 Baker Street. At Baker Street, Lieutenant Rice, Officer
19 Nero, and Officer Miller removed Mr. Gray from the wagon,
20 placed flex cuffs on his wrists, placed leg shackles on
21 his ankles, and completed required paperwork. Officer
22 Miller, Officer Nero, and Lieutenant Rice then loaded Mr.
23 Gray back into the wagon, placing him on his stomach, head
24 first, onto the floor of the wagon.
25 Once again, Mr. Gray was not secured by a seatbelt in

1 the wagon contrary to a BPD general order. Lieutenant
2 Rice then directed Officer Goodson to transport Mr. Gray
3 to the Central Booking and Intake Facility. Following
4 transport from Baker Street, Mr. Gray suffered a severe
5 and critical neck injury as a result of being handcuffed,
6 shackled by his feet, and unrestrained inside of the BPD
7 wagon.
8 From Baker Street, Officer Goodson proceeded to the
9 vicinity of Mosher Street and Fremont Avenue, where he
10 subsequently parked the wagon and proceeded to the back of
11 the wagon in order to observe Mr. Gray. Despite stopping
12 for the purpose of checking on Mr. Gray's condition, at no
13 point did he seek nor did he render any medical assistance
14 for Mr. Gray.
15 Officer Goodson returned to his driver's seat and
16 proceeded toward the Central Booking and Intake Facility
17 with Mr. Gray still unsecured by a seatbelt contrary to a
18 BPD general order. Several blocks later, Officer Goodson
19 called into dispatch that he needed to check on the status
20 of his prisoner and requested additional units at Dolphin
21 Street and Druid Hill Avenue.
22 Officer William Porter arrived on the scene near
23 Dolphin Street and Druid Hill Avenue. Both Officer
24 Goodson and Officer Porter proceeded to the back of the
25 wagon to check on the status of Mr. Gray's condition. Mr.

1 Gray, at that time, requested help and indicated that he
2 could not breathe. Officer Porter asked Mr. Gray if he
3 needed a medic, at which time Mr. Gray indicated at least
4 twice that he was in need of a medic.
5 Officer Porter then physically assisted Mr. Gray from
6 the floor of the van to the bench. However, despite Mr.
7 Gray's appeal for a medic, both officers assessed Mr.
8 Gray's condition and at no point did either of them
9 restrain Mr. Gray per BPD general order, nor did they
10 render or request medical assistance.
11 While discussing the transportation of Mr. Gray for
12 medical attention, a request for additional units was made
13 for an arrest at the 1600 West North Avenue. Officer
14 Porter left the vicinity of Dolphin Street and Druid Hill
15 Avenue to assist in the arrest of another prisoner at
16 North Avenue. Despite Mr. Gray's obvious and recognized
17 need for medical assistance, Officer Goodson, in a grossly
18 negligent manner, chose to respond to the 1600 block of
19 West North Avenue with Mr. Gray still unsecured by a
20 seatbelt in the wagon without rendering to or summonsing
21 medical assistance for Mr. Gray.
22 Officer Goodson arrived at North Avenue to transport
23 the individual arrested at the location of North Avenue
24 and Pennsylvania Avenue. At which time he was again met
25 by Officer Nero, Miller, Porter, and Lieutenant Rice.

1 Once the wagon arrived, Officer Goodson walked to the back
2 of the wagon and again opened the doors to the wagon to
3 make observations of Mr. Gray. Sergeant Alicia White,
4 Officer Porter, and Officer Goodson observed Mr. Gray
5 unresponsive on the floor of the wagon. Sergeant White,
6 who was responsible for investigating two citizen
7 complaints pertaining to Mr. Gray's illegal arrest, spoke
8 to the back of Mr. Gray's head. When he did not respond,
9 she did nothing further despite the fact that she was
10 advised that he needed a medic.
11 She made no effort to look, or assess, or determine
12 his condition. Despite Mr. Gray's seriously deteriorating
13 medical condition, no medical assistance was rendered or
14 summons for Mr. Gray at that time by any officer. After
15 completing the North Avenue arrest and loading the
16 additional prisoner into the opposite side of the wagon
17 containing Mr. Gray, Officer Goodson then proceeded to the
18 Western District police station where contrary to the BPD
19 general order, he again failed to restrain Mr. Gray in the
20 wagon for at least the fifth time.
21 As the Western District police station, the defendant
22 arrested at North Avenue was unloaded, escorted, and
23 secured inside of the police station prior to attending to
24 Mr. Gray. By the time Officer Zachary Novak, Sergeant
25 White, and an unknown officer attempted to remove Mr. Gray

1 from the wagon, Mr. Gray was no longer breathing at all.
2 A medic was finally called to the scene, whereupon arrival
3 the medic determined that Mr. Gray was now in cardiac
4 arrest and was critically and severely injured.
5 Mr. Gray was rushed to the University of Maryland
6 Shock Trauma where he underwent surgery. On April 19th,
7 2015, Mr. Gray succumbed to his injuries and was
8 pronounced dead. The manner of death deemed a homicide by
9 the Maryland State Medical Examiner is believed to be the
10 result of a fatal injury that occurred while Mr. Gray was
11 unrestrained by a seatbelt in the custody of the Baltimore
12 Police Department wagon. All events occurred in Baltimore
13 City, State of Maryland.
14 While each of these officers are presumed innocent
15 until proven guilty, we have brought the following
16 charges:
17 Officer Caesar Goodson is being charged with second-
18 degree depraved heart murder, involuntary manslaughter,
19 second-degree negligent assault, manslaughter by vehicle
20 by means of gross negligence, manslaughter by vehicle by
21 means of criminal negligence, misconduct in office for
22 failure to secure a prisoner, failure to render aid.
23 Officer William Porter is being charged with
24 involuntary manslaughter, assault in the second-degree,
25 misconduct in office.

1 Lieutenant Brian Rice is being charged with
2 involuntary manslaughter, assault in the second-degree,
3 assault in the second-degree, misconduct in office, false
4 imprisonment.
5 Officer Edward Nero is being charged with assault in
6 the second-degree, intentional. Assault in the second-
7 degree, negligent. Misconduct in office, false
8 imprisonment.
9 Officer Garrett Miller is being charged with
10 intentional assault in the second-degree. Assault in the
11 second-degree, negligent. Misconduct in office and false
12 imprisonment.
13 Sergeant Alicia White is being charged with
14 manslaughter, involuntary manslaughter, second-degree
15 assault, misconduct in office.
16 While I am committed to transparency, what I have
17 revealed here today is now a matter of public record.
18 However, the evidence that we have collected and continue
19 to collect, can not ethically be released to the public.
20 And I strongly condemn anyone in law enforcement with
21 access to trial evidence who has leaked information prior
22 to the resolution of this case, you are only damaging our
23 ability to conduct a fair and impartial process for all
24 parties involved.
25 I hope that as we move forward with this case

1 everyone will respect due process and refrain from doing
2 anything that will jeopardize our ability to seek justice.
3 To the people of Baltimore and the demonstrators across
4 America, I heard your call for "no justice, no peace."
5 Your peace is sincerely needed as I work to deliver
6 justice on behalf of this young man.
7 To those that are angry, hurt, or have their own
8 experiences of injustice at the hands of police officers,
9 I urge you to channel the energy peacefully as we
10 prosecute this case. I have heard your calls for "no
11 justice, no peace." However, your peace is sincerely
12 needed as I work to deliver justice on behalf of Freddie
13 Gray.
14 To the rank and file officers of the Baltimore City
15 Police Department, please know that these accusations of
16 these six officers are not an indictment on the entire
17 force. I come from five generations of law enforcement.
18 My father was an officer, my mother was an officer,
19 several of my aunts and uncles, my recently departed and
20 beloved grandfather was one of the founding members of the
21 first black police organization in Massachusetts.
22 I can tell you that the actions of these officers
23 will not and should not in any way damage the important
24 working relationships between police and prosecutors as we
25 continue to fight together to reduce crime in Baltimore.

1 Thank you for your courage, commitment, and sacrifice for
2 the betterment of our communities.
3 Lastly, I'd like to thank my team for working around
4 the clock since the day that we learned of this tragic
5 incident. We have conducted a thorough and independent
6 investigation of this case. This independent
7 investigation was led by my Deputy State's Attorney,
8 Janice Bledsoe and Michael Schatzow. My investigators
9 Wayne Williams, Avon Mackle, and the hardworking
10 investigative team that were here and still are, very much
11 committed to pursuing justice.
12 I would also like to thank the Baltimore City Police
13 Department, particularly Major Branford of the Homicide
14 Unit, and Rodney Hill of the Internal Affairs Division,
15 for providing us with a hard copy of their investigative
16 materials yesterday, information that we already had. And
17 lastly, I would like to thank the Baltimore City Sheriff'S
18 Department in assisting us with this investigation as an
19 independent law enforcement agency with police powers.
20 To the Governor of this great State of Maryland,
21 thank you for expediting the autopsy report which enabled
22 us to do our job. Last, but certainly not least, to the
23 youth of this City. I will seek justice on your behalf.
24 This is a moment, this is your moment. Let's ensure that
25 we have peaceful and productive rallies that will develop

1 structural and systemic changes for generations to come.
2 You're at the forefront of this cause. And as young
3 people, our time is now. I'm going to take a few
4 questions.
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1 TRANSCRIBER'S CERTIFICATE
2
3 This is to certify that the transcription of the
4 press conference in the matter of Freddie Gray conducted
5 on May 1st, 2015, was recorded on digital media with
6 video.
7 I hereby certify that the proceedings herein
8 contained were transcribed by me or under my direction.
9 That said transcript is a true and accurate record to the
10 best of my ability and constitutes the official transcript
11 thereof.
12 In witness thereof, I have hereunto subscribed
13 my name on May 4th, 2015.
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18 Sherry R. Miller, President
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Police Department
Baltimore, Maryland

Office of Internal Oversight, FIT Team

24 hour report

To: **Lieutenant Michael Norris**
Commander Force Investigation Team

Via: **Official Channels**

From: **Sergeant Tashawna Gaines**

Incident: In-Custody Injured Person
CC#: 7-150404793
FIT#: 15J0013

Location: 1034 N. Mount St

Date/Time: 12 April 2015 0911 hours

Method: Suspect was found lethargic and unresponsive in the back of the wagon.

Officer Involved #1: Lt. Brian Rice M/W
Seq# G209 EOD: 12/21/97

Officer Involved #2: Ofc. Garrett Miller M/W
Seq# J239 EOD: 04/09/12

Officer Involved #3: Ofc. Edward Nero M/W
Seq# J298 EOD: 02/26/12

Officer Involved #4: Ofc. Caesar Goodson M/B
Seq# G483 EOD: 08/18/99

Officer Witnessing #1: Sgt. Alicia White F/B
Seq# I841 EOD: 04/26/10

DEFENDANT'S EXHIBIT
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Officer Witnessing #2: Ofc. Zachary Novak M/W
Seq# J265 EOD: 05/22/12

Civilian Witness #1: Donta Allen M/B
DOB: 07/09/92
531 Cumberland St

Civilian Witness #2: Kevin Moore M/B
DOB: 03/14/87
1666 Brice Ct

Suspect Information: Freddie Grey SID: 3080619
M/B DOB: 08/16/89
2431 Callow Ave
Baltimore, MD 21217

Investigator: Colonel Garnell Green, Detective Lieutenant Michael Norris, Detective Sergeant Tashawna Gaines, Detective Syreeta Teel, Detective Charles Anderson, Detective Michael James Boyd, Detective Joseph Poremski

Notification:

On Sunday, 12 April 2015 at 0954 hours, Detective Sergeant Tashawna Gaines received a call via the Communications Section concerning an In-Custody Injured Person at 1034 N. Mount St. Col. Green, Det Teel, Det Anderson, Det/Lt Norris and Det/Sgt Tashawna Gaines responded to the scene and assumed command of the investigation. Det. Boyd and Det. Poremski responded to the Homicide Office.

Summary:

On Sunday, 12 April 2015 at approximately 0911 hrs Lt. Brian Rice, Officer Garrett Miller, and Officer Edward Nero were on bike patrol in the area of the 1600 Blk North Ave, at which time, they made eye contact with Freddie Grey who was also in the area. Upon making eye contact, Mr. Grey fled on foot and a brief pursuit ensued with the officers on their bikes. Back-up units were requested and officer's made contact with Mr. Grey in the 1700 Blk Presbury where he was detained. A search for weapons revealed Mr. Grey was in possession of a spring loaded knife clipped to his front right pocket. Mr. Grey was placed under arrest, at which time he, became very combative. Mr. Grey was placed in the wagon to be transported to CBIF. Mr. Grey remained combative while in the wagon, so Ofc. Goodson stopped the wagon at Mount St/Baker St and placed leg irons on him. Ofc. Goodson then began to transport Mr. Grey to CBIF, at which time; he was requested to return for an additional transport, as he was the only wagon operational in the district. Ofc. Goodson turned around and responded to North Ave/Mount St to pick

up arrestee Donta Allen. Ofc Goodson then proceeded to the Western District to drop off Mr Allen. According to Donta Allen, during the transport from North/Mount he could hear Mr. Grey banging against the walls of the wagon compartment. Donta Allen went on to say that it his belief Mr. Grey was intentionally trying to hurt himself. Mr. Allen advised while they were being transported the ride was not bumpy, nor was the wagon being driven erratically or making abrupt stops and starts. Mr. Allen also advised from the time he was being transported, they made no stops where the wagon doors were opened. Mr. Allen provided a recorded statement.

Upon arriving at the Western District, Mr. Grey was described as being unresponsive in the back of the wagon, at which time, a Medic was requested. Medic #43 responded to the district and Mr. Grey was transported to Shock Trauma, where he is currently listed in critical but stable condition. Crime Lab Tech Jennifer Anderson Unit 5821 responded to the scene and processed same and took photographs. All proper notifications were made. An area canvass for witness(es) was conducted and all identified witness(es) provided recorded statements. Investigation is on-going.

Weapons Inspection:

In reference to the aforementioned investigation, on 12 April 2015 at approximately 1338 hrs, Detective Sergeant Tashawna Gaines (Unit 1710) conducted an inspection of Officer Caesar Goodson's departmentally issued taser model X26P serial #X13000DM2 and cartridge's (1) #C41037C4V (2) #C41037894 at the Homicide Section Office, same was submitted to ECU by Crime Lab Tech Jennifer Anderson (Unit 5821) for inspection by the Armory Unit.

On 12 April 2015 at approximately 1340 hrs, Detective Sergeant Tashawna Gaines (Unit 1710) conducted an inspection of Officer Edward Nero and found he had not been issued a departmental taser.

On 12 April 2015 at approximately 1340 hrs, Detective Sergeant Tashawna Gaines (Unit 1710) conducted an inspection of Officer Garrett Miller's departmentally issued taser model X26P serial #X13000CK8 and cartridge's (1) #C41037C4V (2) #C4103HWM9 at the Homicide Section Office, same was submitted to ECU by Crime Lab Tech Jennifer Anderson (Unit 5821) for inspection by the Armory Unit.

On 12 April 2015 at approximately 1346 hrs, Detective Sergeant Tashawna Gaines (Unit 1710) conducted an inspection of Lieutenant Brian Rice's departmentally issued taser model X26P serial #X13000CR4 and cartridge's (1) #C4103723A (2) #C410371V3 at the Homicide Section Office, same was submitted to ECU by Crime Lab Tech Jennifer Anderson (Unit 5821) for inspection by the Armory Unit.

_____

Sergeant Tashawna Gaines
Supervisor
FIT Team

Lieutenant Michael Norris
Commander
FIT Team