

STATE OF MARYLAND VS. KERRON ANDREWS
June 4, 2015 BEFORE JUDGE CHARLES J. PETERS

STATE OF MARYLAND,	*	IN THE
	*	CIRCUIT COURT
V	*	FOR
KERRON ANDREWS,	*	BALTIMORE CITY
Defendant.	*	CASE NOS. 114149007-009
* * * * *	*	* * * * *

TRANSCRIPT OF OFFICIAL PROCEEDINGS
(Cont. of Motion to Dismiss/Suppress/Sanctions Hearing)

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BEFORE: THE HONORABLE CHARLES J. PETERS, JUDGE

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HEARING DATE: June 4, 2015

-- -- -- -- --

APPEARANCES:

For the State: Katie M. O'Hara, ASA

For the Defendant: Deborah K. Levi, APD

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STATE'S WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
None called.				

DEFENSE'S WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
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Exhibit 11

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1 P R O C E E D I N G S

2 (On the record - 10:18:43 a.m., Defendant present.)

3 THE COURT: All right. Counsel, you want to
4 call Mr. Andrews' case.

5 MS. O'HARA: Yes, Your Honor. Good morning.
6 Calling the State of Maryland versus Kerron Andrews,
7 114149007, through and including 009. Assistant State's
8 Attorney, Katie O'Hara, for the State.

9 MS. LEVI: Good afternoon, Your Honor. Deborah
10 Levi, on behalf of Mr. Andrews. I apologize for being
11 tardy. I was dealing with a mistrial, from yesterday
12 afternoon, this morning in Judge Heard's chambers.

13 THE COURT: All right. Can we have Mr. Andrews,
14 I guess, cuffed in the front then. So, where are we then,
15 Counsel?

16 MS. O'HARA: Your Honor, it would be my
17 recollection that Ms. Levi was finished examining
18 Detective Converse. I would have an opportunity, I
19 believe, now to cross-examine Detective Converse.

20 By way of just a scheduling matter, I had
21 inquired of Ms. Levi if she intended to call Detective
22 Converse's supervisor, Sergeant Fallon, who I've made
23 available last hearing date, and is available today.

24 If he's not going to be called, I'd like to
25 excuse him. He has been in the Southwest District for two

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1 days straight. And if he's not necessary, I'd like to --

2 THE COURT: Okay. Well, is he --

3 MS. O'HARA: -- be able to let him get on with
4 his --

5 THE COURT: -- you tell me.

6 MS. O'HARA: It's Ms. Levi's position.

7 MS. LEVI: Well, I did actually -- I hadn't
8 quite rested with the Detective. I only had one more set
9 of questions briefly to ask him --

10 THE COURT: Okay.

11 MS. LEVI: -- before I turned him over. And
12 then --

13 THE COURT: All right. Where's Detective
14 Converse?

15 MS. O'HARA: He's in the hallway, Your Honor.
16 I'll get him.

17 THE COURT: Okay.

18 MS. LEVI: -- Detective Converse. And then as
19 to Detective Fallon --

20 MS. O'HARA: -- I'm sorry.

21 MS. LEVI: -- my intention was then to question
22 the officer who dealt with the Stingray and the cell phone
23 information. Do, I didn't need Detective Fallon.

24 MS. O'HARA: Okay. So, I'm going to excuse
25 Sergeant Fallon.

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1 MS. LEVI: Sergeant, I'm sorry --

2 MS. O'HARA: Thank you.

3 MS. LEVI: -- Sergeant Fallon.

4 MS. O'HARA: And I'll get Detective Converse.

5 THE COURT: Okay.

6 THE COURT: Go ahead, Detective, why don't you
7 take the stand again. All right. Why don't we have him
8 re-sworn.

9 THE CLERK: Raise your right hand.

10 JEFFREY CONVERSE

11 (A witness, previously ordered to be produced by the
12 Court, previously produced by the State, previously called
13 by the Defense, was sworn according to law, resumes the
14 witness stand and continues testifying as follows:)

15 MR. CONVERSE: I do.

16 CLERK: Okay. You can have a seat. Once you're
17 situated, make sure you speak into the microphone. And
18 state your name and assignment for the record.

19 MR. CONVERSE: Detective Jeffrey Converse,
20 Criminal Investigation Division, Southwestern District
21 Detective Unit, Shooting Investigations.

22 THE CLERK: Thank you.

23 THE COURT: Go ahead, Counsel.

24 MS. LEVI: I'm sorry, Your Honor, my apologies.
25 I don't remember the last exhibit that I --

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1 THE COURT: Okay. I think it's Exhibit 8, so it
2 would be Exhibit 9.

3 THE CLERK: Your Honor, I have 9 and 10. I have
4 11, it should be.

5 THE COURT: Well, that's interesting. Well,
6 hang on a second.

7 THE CLERK: I have 9 (approaching the bench) --

8 THE COURT: Have they been marked?

9 THE CLERK: Yes, for evidence, 9 is the notes in
10 the interview -- Notes Interview with somebody, Spentotto.
11 And then the e-mails from the State is No. 10, marked as
12 evidence.

13 THE COURT: All right. Well, I'd say we're on
14 No. 11 then.

15 MS. LEVI: Thank you, Your Honor. And Court's
16 indulgence? I just received these documents in response
17 to the subpoena from the police department upon my entry
18 into the courtroom. (Consulting with Counsel.)

19 THE COURT: (Court briefly handles unrelated
20 matter, not transcribed.)

21 MS. LEVI: Your Honor, may I approach --

22 THE COURT: Yes, Madame Clerk -- yes.

23 MS. LEVI: -- the Clerk to number exhibits --

24 THE COURT: -- yes. (Unrelated aside
25 conversation not transcribed.)

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1 MS. LEVI: May I approach the witness, Your
2 Honor?

3 THE COURT: Yes, go right ahead.

4 DIRECT EXAMINATION (CONTINUED)

5 BY MS. LEVI

6 Q I'm going to show you what's previously been
7 marked as Defense Exhibit 1. Can you tell me again what
8 that is, Detective Converse?

9 A It appears to be a copy of General Order J-9,
10 the Double-Blind Sequential Photographic Array Procedures.

11 Q Okay. And you're familiar with that?

12 A Yes.

13 Q And I'm going to direct your attention -- and at
14 the top, it says the date published. Can you tell me the
15 date published for the record?

16 A October 22nd, 2013.

17 Q And I believe that I've entered this into
18 evidence, but with delay, it's been three weeks I think
19 since the last proceeding, I'd move to enter that into
20 evidence, just to be extra cautious.

21 MS. O'HARA: I have no objection.

22 BY MS. LEVI

23 Q All right. And then I'm going to direct --

24 THE COURT: All right. So, this is No. 12?

25 MS. LEVI: No, actually this is No. 1. I'm not

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1 sure if it's been admitted or just identified, so just to
2 be cautious.

3 THE COURT: Well, hang on one second. What is
4 it -- what are you showing?

5 MS. LEVI: This is the photographic array
6 procedures.

7 THE COURT: No, I get that. But what is the --
8 on the original hearing date, what was --

9 MS. LEVI: Number 1.

10 THE COURT: Do you show it being admitted,
11 Madame Clerk?

12 THE CLERK: It shows it was admitted.

13 MS. LEVI: Okay.

14 THE CLERK: Yes.

15 THE COURT: All right.

16 MS. LEVI: Sorry.

17 THE COURT: Hang on one second. (Turns on white
18 noise; handles unrelated matter; turns off white noise.)

19 Go ahead. Go ahead, Counsel.

20 BY MS. LEVI

21 Q Can I direct your attention then to Page 5
22 of 11.

23 A In here, it's only listed as ten pages.

24 Q At the top, it should say, in the right-hand
25 corner, Page 5 of 11 --

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1 A (Indicating.)

2 Q Oh, okay. Well, let me hand you the one I was
3 given today from the police department. And apparently
4 that one's a little bit different. So, we'll switch those
5 out.

6 THE COURT: I'm sorry. What are you switching
7 out?

8 MS. LEVI: So, it looks like, Your Honor, the
9 copy of the photo array procedures that Defense Counsel
10 previously identified as Exhibit No. 1 was published on
11 October 22nd, 2013. And then I subpoenaed, just to be
12 sure, an extra copy from the police department.
13 Mr. Shubert (phonetic) was here this morning, he had to go
14 to a civil docket. He responded to this subpoena this
15 morning in person. And left a copy.

16 And now, it's the same document photographic
17 procedures -- Double-Blind Sequential Photographic Array
18 Procedures. But instead of saying there's [sic] ten
19 pages, this one says there's 11 pages.

20 THE COURT: Okay. Well, you should have it
21 marked then, I think. Otherwise --

22 MS. LEVI: Okay. So, why don't we then --

23 THE COURT: -- I don't know how we're --

24 MS. LEVI: -- yes, that's a great idea. Mark it
25 as Exhibit?

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1 THE COURT: You can mark it Exhibit 11, I
2 believe --

3 THE CLERK: 11.

4 (Defense's Exhibit 11 is marked for identification.)

5 MS. LEVI: Okay. May I just retrieve that
6 briefly. I didn't expect that. If I may have Court's
7 indulgence for one second?

8 THE COURT: Sure.

9 MS. LEVI: I'm sorry. I didn't expect them to
10 be different, and I'm looking for Page 1. All right.

11 BY MS. LEVI

12 Q So, can you tell me again what that is. That's
13 Defense Exhibit 11.

14 A It doesn't have the General Order listed on it.
15 But it's dated October 22nd, 2013, the Double-
16 Blind/Sequential Photographic Array Procedures.

17 Q All right. And if I could direct then, your
18 attention on that one, to Page 5 of 11? Do I have it
19 right here?

20 A There's no 5.

21 Q Okay. There you go (handing document to the
22 witness). Sorry. This is a little sloppy, because I
23 didn't know they were different. So, there you go.

24 THE COURT: Is that all one document?

25 MS. LEVI: Yes. Apparently it is all one

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1 document --

2 THE COURT: All right. Can you --

3 MS. LEVI: -- and I only have one copy.

4 THE COURT: Okay. Can you pass it up to be
5 stapled, or pass it to Madame Clerk --

6 MS. LEVI: Yes, Your Honor.

7 THE COURT: -- so it can be stapled.

8 MS. LEVI: (Approaching the Clerk.)

9 BY MS. LEVI

10 Q Okay. I'm going to re-hand you Defense Exhibit
11 11. And if I can direct your attention to Page 5 of 11.
12 Okay.

13 MS. LEVI: And I better, for sake of
14 housekeeping purposes, make the record clear, the one that
15 I -- we entered -- Defense entered into Exhibit 1 at the
16 prior proceeding, was what we believed to be the most
17 current Double-Blind Sequential Photo Array Procedures.

18 BY MS. LEVI

19 Q So, now that I've shown you what the police
20 department arrived with today -- also published on October
21 22nd, 2013 -- is it your understanding, Detective
22 Converse, that those are the most recent procedures for
23 Double-Blind Sequential Photographic Array Procedures?

24 A I don't --

25 Q You want to take --

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1 A -- I don't know.

2 Q -- you want to take a minute to look at them?

3 A (Reviewing document.)

4 Q Is that your understanding to be the most recent
5 copy of the Double-Blind Sequential Photographic Array
6 Procedures?

7 A If you got this from our legal department, I
8 would have to say yes.

9 Q Okay.

10 MS. LEVI: At this time, I would move to admit
11 Defense Exhibit 11 into evidence.

12 MS. O'HARA: No objection.

13 THE COURT: All right. It will be admitted.

14 (Defense's Exhibit 11, Double-Blind Sequential
15 Photographic Array Procedures, 11 pages, is identified and
16 admitted into evidence.)

17 BY MS. LEVI

18 Q Okay. Now, if I could direct your attention to
19 Page 5 of 11.

20 A Which 5 of 11? There's [sic] two of them.

21 Q Well, let's see, if they're exactly the same,
22 then I would say either one.

23 THE COURT: I'm sorry. I thought there was ten
24 pages in one, and then 11 pages in the other, and now
25 there are 11 pages in both?

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1 MS. LEVI: Your Honor, the one that we entered
2 into -- the exhibit -- I'm sorry, the one that we entered
3 into evidence at the last proceeding is dated October
4 22nd, 2013, is what we believed to be the most updated. I
5 haven't --

6 THE COURT: I think this one's dated October
7 22nd, 2013.

8 BY MS. LEVI

9 Q So at the end, actually, Detective, there may be
10 -- sometimes on the very last page, will be an updated
11 date on there. Can you please flip to the very last page
12 and see if there's a date that the report was updated. Or
13 I'm happy to do that for Your Honor -- and for myself, as
14 well.

15 A On both Page 11 of 11s, there's no update.

16 Q Okay.

17 THE COURT: Okay. So, these are the -- is
18 State's Exhibit -- or I'm sorry, Defense Exhibit 1 and 11,
19 are they the same document?

20 MR. CONVERSE: (No audible/visible response.)

21 MS. LEVI: Um.

22 THE COURT: Okay. All right. Well, you're
23 referring to Page 5 of 11, we're doing State's Exhibit
24 No. 11. Okay.

25 MS. LEVI: Defense Exhibit --

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1 THE COURT: Defense Exhibit No. 11 --

2 MS. LEVI: Right.

3 THE COURT: -- thank you.

4 MS. LEVI: If I may approach briefly, Your
5 Honor --

6 THE COURT: Sure.

7 MS. LEVI: -- to also look for an updated date.
8 And again, I just received those documents.

9 MR. CONVERSE: And there's [sic] two pages, 5
10 and 11, there's [sic] two of every page.

11 MS. LEVI: Oh, good. Then he did give us two
12 copies. Detective Converse has indicated there's [sic]
13 two of every page.

14 So, I guess the police department provided us
15 two copies of every page without -- and I'm going to look
16 on the last page to see --

17 THE COURT: Okay.

18 MS. LEVI: -- if there is -- it's interesting.

19 THE COURT: Wait a minute, Counsel. Wait a
20 minute. So there are 22 pages in that document?

21 MS. LEVI: Can I have Court's indulgence, and
22 I'll separate them, so it's --

23 THE COURT: Sure.

24 MS. LEVI: -- so we're entering the correct
25 document into the record.

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1 THE COURT: All right. While you're doing that,
2 Counsel, everyone remain seated --

3 MS. LEVI: I had subpoenaed the --

4 THE COURT: -- I'm going to -- I'll step off for
5 one second.

6 MS. LEVI: Thank you, Your Honor. Sorry. I had
7 subpoenaed them for the last hearing.

8 (Off the record / Judge stands down - 10:33:15 a.m.)

9 (On the record / Judge re-entering the courtroom -
10 10:37:17 a.m.)

11 THE COURT: Everybody remain seated. Go ahead,
12 Ms. Levi.

13 MS. LEVI: Your Honor, thank you for giving me
14 time to compare the two documents. It appears that they
15 are similar entirely. The font and the style was changed
16 in the one the police department brought today. But the
17 content is the same, which is why there's no updated
18 version, and one has ten pages and one has 11.

19 THE COURT: Okay.

20 MS. LEVI: So, for the sake of clarity, if we
21 could go with the one that the police department brought
22 today --

23 THE COURT: That's Defense Exhibit No. 11.

24 MS. LEVI: Yes.

25 THE COURT: Okay.

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1 MS. LEVI: And may I approach the witness
2 then --

3 THE COURT: Yes, go ahead.

4 MS. LEVI: -- again, Your Honor. Actually, the
5 Clerk, first -- Madame Clerk, to mark it, I think it was
6 improperly marked. So, we'll start all over.

7 THE COURT: Okay. So, again, that is Defense
8 Exhibit 11?

9 MS. LEVI: Yes.

10 THE COURT: Okay.

11 MS. LEVI: And I'd move to admit, so --

12 THE CLERK: I still noted that --

13 THE COURT: It's been admitted.

14 MS. LEVI: Okay.

15 THE COURT: It's been admitted.

16 MS. LEVI: Thank you.

17 BY MS. LEVI

18 Q Thank you for your patience, Detective Converse.
19 If I could now direct your attention to Page 5 of 11. Are
20 you with me?

21 A Yes, ma'am.

22 Q At the top of the page, looking down, there's
23 Numeral 4, and then Numeral 5. Can you read Numeral 5 for
24 me, please.

25 A "Make a copy of the completed photographic array

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1 forms, and retain them in the investigative case folder."

2 Q And then, can you continue to read the note, it
3 says, "NOTE" in all caps, below that. Could you say that
4 for me, please.

5 A Yes. "These procedures must be followed for all
6 photographic arrays, whether or not identification was
7 made."

8 Q And we would agree that, as you said last time,
9 you did not do that in this particular case, correct?

10 A Yes.

11 Q Yes?

12 A I did not do that.

13 Q Okay. And then, can you read No. 6 out loud for
14 me, please.

15 A "The primary investigator must submit to the
16 Evidence Control Unit, ECU, all original completed
17 photographic arrays, and associated forms, including the
18 original numbered folders" contained -- I'm sorry --
19 "containing shown photographs and Forms 480/13 Annex B,
20 481/13 Annex C, and 482/13 Annex D."

21 Q And you understand that to mean that you were to
22 submit the photographic array in a sealed envelope -- or
23 in an envelope, right?

24 A Yes.

25 Q And then the ECU, the Evidence Control Unit,

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1 would then retain that property as evidence, correct?

2 A Yes.

3 Q And give you a property submission receipt,
4 correct?

5 A Yes.

6 Q So, there'd be a record of it, right?

7 A Yes.

8 Q And it would be safely kept until trial, right?

9 A Yes.

10 Q And you did not do that in this case, did you?

11 A No.

12 Q So, not in your case file, right?

13 A No.

14 Q And not in ECU, right?

15 A No.

16 Q And then again, if you could look to the next
17 section of the page, in all capitals, "REPORTING RESULTS
18 OF PHOTO ARRAY." Do you see that?

19 A Yes.

20 Q And can you read No. 1 out loud for me?

21 A "The primary investigator must prepare a form
22 482/13 for each photographic array shown and submit it to
23 ECU. This report must include the date, time and location
24 of the photo array, and identify each photograph by the
25 SID number or another unique identifier in the order

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1 shown, and the date the photos were taken."

2 Q And then, again, keep reading in 1.1.

3 A "Document the ECU Number on a Supplemental
4 Report Form 007."

5 Q And then, No. 2.

6 A "If any questions arise concerning the" --
7 excuse me -- "if any questions arise concerning the
8 procedure, or the showing of a photographic array, consult
9 with" the supervisory personnel -- "consult with
10 supervisory personnel for guidance."

11 Q And we can agree that you did not do a Form
12 482/13 for this photographic array, did you?

13 A For which photographic array?

14 Q The photographic array that was shown to
15 Mr. Braxton, and the photographic array -- actually, thank
16 you -- and the photographic array that was shown --

17 MS. LEVI: (Consulting with Counsel) -- I'm
18 sorry, Mr. Braxton is my trial that I was just.

19 BY MS. LEVI

20 Q -- Mr. Holloway?

21 A Yes.

22 Q And the photographic array --

23 MS. LEVI: (Consulting with Counsel.)

24 BY MS. LEVI

25 Q -- and the photographic array that was shown to

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1 Rihanna Allen, right?

2 A Yes.

3 Q And you did not consult with your supervisor for
4 any questions that had arisen regarding the procedure for
5 photographic arrays, did you?

6 A No, I did not.

7 Q And then lastly, if you can read the next
8 section titled, "Supervisors." Can you read that for me,
9 please.

10 A "Ensure the above procedures are followed by
11 members of the department. If there are questions
12 concerning the procedure or the showing of a photo array,
13 consult with the State's Attorney's Office or the Legal
14 Affairs Section of the Baltimore Police Department."

15 Q You didn't do that in this case, did you?

16 A No.

17 Q You didn't say, would it be okay for me to keep
18 this negative photo array in my desk?

19 A No, I did not.

20 Q And then to the -- I said lastly, but I didn't
21 really mean that, I'm going to mean it now. Can you go to
22 the next page, Page 6 of 11. And again, "REPORTING
23 RESULTS OF PHOTO ARRAY," this is the last section about
24 the duties to report. Can you read No. 1 for me.

25 A "The primary investigator must prepare the forms

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1 contained in this policy for each photographic array for
2 submission to ECU upon completion, as appropriate.
3 Identify each photograph by the SID number or other unique
4 identifier in the order shown, and the date the photos
5 were taken."

6 Q So, how that translates is that, I'm showing
7 you --

8 MS. LEVI: I'm not going to enter it into
9 evidence --

10 BY MS. LEVI

11 Q -- but I'm going to show an envelope. You would
12 recognize this as an envelope that's sometimes submitted
13 to ECU, right?

14 A Yes.

15 Q And so what you just read means, that there
16 should be an envelope with a photo array for each photo
17 array that was conducted in this case, correct?

18 A Yes, or all in the same envelope.

19 Q Well, doesn't it say, for each photographic
20 array --

21 THE COURT: Well, Ms. Levi, I --

22 MS. LEVI: Okay. Fine.

23 THE COURT: -- I don't think it was submitted.

24 I --

25 MS. LEVI: Okay.

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1 THE COURT: -- think he's acknowledged it, and
2 -- thank you.

3 BY MS. LEVI

4 Q Did your supervisor look over your file --

5 A No.

6 Q -- in this case?

7 A No, he did not.

8 Q And if your supervisor had looked over your
9 file, how would your supervisor -- your supervisor
10 wouldn't have even known that you had, for all intents and
11 purposes, hidden a photo array in your desk?

12 MS. O'HARA: Objection.

13 THE COURT: (No audible response.)

14 BY MS. LEVI

15 Q Does your supervisor have any way looking at
16 that to determine that you had completed a photo array
17 that you didn't submit? Looking, by this, I mean your
18 case folder.

19 A No.

20 Q Detective Converse, it's fair to say, you knew
21 full well that you should have kept that photo array, both
22 of them, in your case file, right?

23 A Yes.

24 Q And you should have submitted them to ECU,
25 right?

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1 A Yes.

2 Q And you didn't?

3 A No, I did not.

4 MS. LEVI: And just moving onto the last topic,
5 Your Honor, for clarity sake, because there's a three-week
6 break here. I just want to ask one other question about
7 the Stingray material, just to refresh everybody's
8 recollection.

9 BY MS. LEVI

10 Q We would agree, that was your obligation --

11 MS. LEVI: Oh, sorry, Court's indulgence?

12 THE COURT: (No audible response.)

13 BY MS. LEVI

14 Q Backing up to the photo array for one second.
15 The procedures that we just read, indicate that the
16 responsibilities we talked about are for the primary
17 investigator, right?

18 A Yes.

19 Q You were the primary investigator on the Kerron
20 Andrews' case, correct?

21 A Yes.

22 Q Okay. Now, moving back to the Stingray
23 information. You would agree, that you were the
24 individual who could gather up the Stingray information,
25 and provide that to the State's Attorney, right?

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1 MS. O'HARA: Objection.

2 THE COURT: I'm sorry, could you repeat that
3 question.

4 BY MS. LEVI

5 Q If you knew the Defense Attorneys were looking
6 for information related to whether a Stingray was used in
7 this case, you would have been able to gather that
8 information -- whether a Stingray was used in this case --
9 and present it to the State's Attorney, right?

10 MS. O'HARA: Objection.

11 THE COURT: Overruled.

12 MR. CONVERSE: I would have had to consult with
13 ATT to find out what exactly equipment that they used to
14 locate Mr. Andrews.

15 BY MS. LEVI

16 Q And you could have done that?

17 A Yes.

18 Q And you did not do that?

19 A No.

20 Q You never provided any information about what
21 electronic surveillance was used in this case to the
22 State's Attorney, did you?

23 A No, I did not.

24 Q But you knew electronic surveillance was used in
25 this case, did you?

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1 A I knew something electronic, I did not know the
2 name or its technology.

3 Q Okay.

4 MS. LEVI: Could I have a moment to consult with
5 Mr. Andrews, Your Honor?

6 THE COURT: Sure.

7 MS. LEVI: (Consulting with Client.) Court's
8 indulgence for one second, please?

9 THE COURT: Sure.

10 MR. CONVERSE: Your Honor, may I have a glass of
11 water --

12 MS. LEVI: I don't have any other questions.

13 THE COURT: Sure. Maybe Ms. O'Hara --

14 MR. CONVERSE: Please.

15 THE COURT: -- yes, sure --

16 MS. O'HARA: Pardon?

17 THE COURT: Could you get the Detective a glass
18 of water.

19 MR. CONVERSE: Thank you.

20 THE COURT: Is there something there?

21 MS. O'HARA: There's [sic] not cups (inaudible)

22 --

23 THE DEPUTY: There's [sic] cups.

24 THE CLERK: We can do that.

25 THE COURT: Okay. Okay.

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1 MR. CONVERSE: Thank you, Your Honor.

2 THE COURT: All right. Thank you. I'm sorry.

3 MS. O'HARA: Your Honor, thank you.

4 CROSS-EXAMINATION

5 BY MS. O'HARA

6 Q Good morning, Detective Converse.

7 A Good morning.

8 Q Detective Converse, when we left off two weeks
9 ago, the Court had asked you a question about, conducting
10 a file review in my office, and why you had not provided
11 the photo array that you conducted with Rihanna Allen
12 during the initial file review. Isn't it true that that
13 photo array did not exist at the initial file review?

14 MS. LEVI: Objection, "that photo array."

15 THE COURT: (No audible response.)

16 BY MS. O'HARA

17 Q With Rihanna Allen?

18 THE COURT: All right.

19 MR. CONVERSE: Do you know --

20 THE COURT: Go ahead.

21 MR. CONVERSE: -- do you know the date of the
22 follow-up --

23 BY MS. O'HARA

24 Q We --

25 A -- interview in your office?

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1 Q Let me rephrase the question then. When we last
2 left, the Court asked you if we had done an initial file
3 review. And your testimony was, generated that shortly
4 after Mr. Andrews' arrest, around the time of charging,
5 that you provided a copy of your case file to me somewhere
6 in the State's Attorney's Office?

7 A Yes.

8 Q Okay. And isn't it true that the photo array
9 you conducted with Rihanna Allen was not conducted until
10 six to seven months after that initial file review?

11 A Yes.

12 Q And isn't it also true that some of the Lotus
13 Notes that you provided only recently were not typed up,
14 were not generated at the time of the initial file review,
15 because those Lotus Notes were done after the initial file
16 review?

17 A Yes.

18 Q Is it fair then to say that your investigation
19 was still continuing after our initial file review?

20 A Yes.

21 Q And that evidence that you generated --
22 documents that you generated were evolving, and not
23 everything ended at the initial file review?

24 Q Okay. And so, what you have said is that, while
25 you gave me everything at the initial file review,

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1 unfortunately you were not -- you did not give me things
2 after that initial file review, correct?

3 A Yes.

4 Q Okay. And to be clear, one of the things that
5 existed at the initial file review, but that I didn't
6 have, was the photo array that you conducted with Ajabar,
7 correct?

8 A Yes.

9 Q Okay. And --

10 THE COURT: That's Holloway?

11 MS. O'HARA: That's Holloway.

12 THE COURT: Okay.

13 MS. O'HARA: Ajabar Holloway.

14 BY MS. O'HARA

15 Q And you indicated, Detective Converse, that you
16 attempted to show Ajabar Holloway -- or attempted to do a
17 photo array procedure with Ajabar Holloway at the
18 hospital, correct?

19 A Yes.

20 Q And isn't it true that Ajabar Holloway refused
21 to look at the pictures?

22 A He did look at the pictures, but would not
23 identify anybody, make any statements, or write anything.

24 Q Okay. Would he even write his name on anything?

25 A No.

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1 Q Would he indicate -- would he go on tape at all?

2 A No.

3 Q Would he even say the photo array was shown to
4 me, and here's my signature to say that I looked at
5 pictures?

6 A No.

7 Q So, he was completely -- I'll use the term,
8 uncooperative, in terms of he would not even follow the
9 basic tenets of, can I have you initial to say that you
10 viewed these photographs?

11 A Yes.

12 Q Okay. So, because of that, did you believe that
13 that photo array was evidence in this case --

14 MS. LEVI: Objection.

15 THE COURT: Okay. Grounds?

16 MS. LEVI: Pardon -- I'm just going to object to
17 the leading nature of the question. Although he was our
18 witness, I think given the circumstances and the nature of
19 the questioning, I think the detective ought to be able to
20 provide his own answer as to why.

21 THE COURT: Okay. You can do that on redirect.
22 Go ahead. Overruled.

23 BY MS. O'HARA

24 Q Did you believe that Ajabar Holloway's -- the
25 that the pictures you showed to Ajabar Holloway

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1 constituted evidence in this case?

2 A Yes.

3 Q Okay. And where did -- if you recall, where did
4 you put that photo array once you showed it to Ajabar
5 Holloway?

6 A It was in my desk.

7 Q Okay. Did you make any effort to throw it away?

8 A No.

9 Q Did you make any effort to shred it?

10 A No.

11 Q Did you make any effort to destroy it at all?

12 A No.

13 Q Okay. If you had wanted to completely conceal
14 it, would you have thrown it away, shredded it, or somehow
15 destroyed it?

16 MS. LEVI: Objection.

17 THE COURT: Sustained. Next question.

18 BY MS. LEVI

19 Q Do you have an explanation as to why it was in
20 your desk?

21 A I don't.

22 Q Okay. Sticking with the photo array. The photo
23 array that you showed to Rihanna Allen was in January of
24 2015, correct?

25 A Yes.

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1 Q So, this was a long time after we had done an
2 initial file review, correct?

3 A Yes.

4 Q Okay. And in the same questions, as to that
5 photo array, where did -- the photo array that you did
6 with Rihanna Allen -- where did you put that?

7 A In my desk.

8 Q And do you have a reason why you put it in my
9 desk?

10 A I just put it in my desk drawer because it was a
11 no-identification photo array.

12 Q Okay. Did you believe -- did you believe, prior
13 to any discussions that we've had about it since then,
14 that it had evidentiary value?

15 A Yes.

16 Q Okay. And was it your attention at some point
17 to bring it to someone's attention?

18 A Yes.

19 Q Okay. Did you make any effort to throw that
20 photo array away?

21 A No.

22 Q Did you try to shred it?

23 A No.

24 Q Did you try to conceal it?

25 A No.

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1 Q And when I asked you about it, did you provide
2 it?

3 A Yes.

4 Q Had anyone asked you about it --

5 MS. LEVI: Objection.

6 BY MS. O'HARA

7 Q -- before I asked you about it --

8 MS. LEVI: Objection.

9 THE COURT: Overruled.

10 BY MS. O'HARA

11 Q To my knowledge, no.

12 A If a supervisor, such as Sergeant Fallon, or
13 your lieutenant had asked you about it, would --

14 MS. LEVI: Objection, relevance?

15 THE COURT: No. Overruled. Go ahead.

16 BY MS. O'HARA

17 Q -- would you have had it available for them to
18 view?

19 A Yes.

20 Q As far as the WATF and ATT information
21 Ms. Levi's asking you about, does WATF and/or ATT forward
22 you information as it relates to their part of warrant
23 apprehension or suspect location?

24 A I'm not sure I understand --

25 Q Do they forward --

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1 A -- the question.

2 Q -- you any documents automatically because
3 you're the primary investigator?

4 A No.

5 Q And has that been case for your cases,
6 generally?

7 A Yes.

8 Q In this case, did they forward you anything?

9 A I believe the location to where they located
10 Mr. Andrews.

11 Q Okay. And did they say, hey, by the way, we
12 have some reports, or we have some documents, do you want
13 them?

14 A No.

15 Q Were you aware if they made reports and/or kept
16 documents?

17 A No.

18 Q With regard to the actual investigation,
19 Ms. Levi began our hearing last time asking you about
20 Suspect No. 2. Based on your investigation and your
21 discussion with the witnesses in this case, did you ever
22 believe that there were two suspects to the shooting?

23 A No.

24 Q Did the witnesses ever indicate that there were
25 two shooters in this case?

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1 A No.

2 THE COURT: Well, let me just -- did they
3 indicate that there were two people involved in the case?

4 MR. CONVERSE: Yes. Their preliminary
5 interviews had indicated there was supposedly more than
6 one person.

7 THE COURT: Okay.

8 BY MS. O'HARA

9 Q Can I follow up on that by asking you to -- if
10 you can summarize what you mean by more than one person?
11 Do you mean more than one person in the area, more than
12 one person involved in the transaction and shooting? Can
13 you summarize for us?

14 A More than one person in the area.

15 Q Was it ever your understanding, from your
16 witness interviews, that there was more than one person
17 involved in the conversation with Ajabar Holloway, and who
18 was identified as the Defendant -- person identified as
19 the Defendant -- who was right there at the car, involved
20 in that conversation, and had a gun?

21 A No, there was no other person identified.

22 Q So, when you say that there was --

23 BY THE COURT

24 Q Well, wait a minute, that's a lot --

25 A I'm --

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1 Q -- were there two people with -- did anyone
2 identify two people with guns, is that --

3 A No.

4 Q All right. Did they identify there were two
5 people, one of which had a gun?

6 A No.

7 Q Okay. All right.

8 BY MS. O'HARA

9 Q So, when you say that other people were
10 involved, do you mean that other people were generally in
11 the area?

12 A Yes.

13 Q So, is it fair to say that the witnesses, and
14 the statements of the witnesses gave [sic] you indicated
15 that there was one suspect?

16 A Yes.

17 Q Detective Converse, I think it's been made
18 obvious, and you have admittedly said that you have
19 violated rules of the General Order, rules of the police
20 department, rules that you know as a Detective, with
21 regard to, particularly the photo arrays in this case.
22 Did you do that -- did you do that intentionally?

23 A No, ma'am.

24 MS. O'HARA: I have nothing further from
25 Detective Converse.

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1 THE COURT: Okay.

2 REDIRECT EXAMINATION

3 BY MS. LEVI

4 Q Detective Converse, could I turn your attention
5 to Progress Report -- let me show you actually --

6 MS. LEVI: This is a Lotus Note 4/30/2014.

7 MS. O'HARA: Can I just get a date on it -- oh.

8 MS. LEVI: (Showing document to Opposing
9 Counsel.) May I approach, Your Honor?

10 THE COURT: Yes.

11 MS. LEVI: You would like it on the front?

12 THE CLERK: Yes.

13 MS. LEVI: Is this number?

14 THE CLERK: 12.

15 MS. LEVI: 12.

16 BY MS. LEVI

17 Q Let me show you what's been marked for
18 identification purposes as Defense Exhibit 12. Can you
19 tell me what that is?

20 A It's a Progress Report dated April 30th, 2014.

21 Q And if you turn to the second page on that, does
22 it have the initials, JAC?

23 A The second page, no, it doesn't.

24 Q Who did that Lotus Note?

25 A Myself, I did.

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1 (Defense's Exhibit 12 is marked for identification.)

2 BY MS. LEVI

3 Q Can you read to me --

4 MS. LEVI: -- If I may again, Your Honor, I can
5 direct the witness's attention to --

6 THE COURT: Sure.

7 BY MS. LEVI

8 Q -- approximately the middle of the page, and the
9 date of this Lotus Note is?

10 A April 30th, 2014.

11 Q And if I could have you read, starting with the
12 word, "stated," about half way down the page.

13 A "Stated when they stopped, Ajabar called the
14 same unknown individual, still using Rihanna's phone, and
15 stated they were there, and told the individual to come
16 out of the car."

17 Q Can you just keep reading for me, please.

18 A "Stated she saw and [sic] unknown Black male
19 wearing a hoodie. No further description, who is Suspect
20 No. 2. And another unknown Black male, Suspect No. 1,
21 with the following description, 'walking from one of the
22 apartment buildings towards the car'."

23 Q So, you indicated in your Lotus Note on
24 April 30th, 2014, that there were two suspects, correct?

25 A According to what Ms. Allen said in her

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1 interview at the time, yes.

2 Q And you indicated that both of those suspects
3 were walking towards the car together, right?

4 A If I may read it again. It says, "stated she
5 saw and [sic] unknown Black male wearing a hoodie. No
6 further description, who is Suspect No. 2. And another
7 unknown Black male...with the following description,
8 'walking from one of the apartment buildings towards the
9 car'."

10 Q Who is, Suspect Number?

11 A It could mean 1 and 2.

12 MS. LEVI: If I may approach again, please, Your
13 Honor?

14 THE COURT: Sure.

15 BY MS. LEVI

16 Q Just so we're clear, I'm not sure where you were
17 reading from?

18 A (Indicating.) The Progress Report that you put
19 in front of me.

20 Q Okay. So, read that again, starting with,
21 "stated she saw."

22 A "Stated she saw and [sic] unknown Black male
23 wearing a hoodie (no further description) [in
24 parentheses], who is Suspect No. 2. And another unknown
25 Black male, (Suspect No. 1) [in parentheses] with the

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1 following description, 'walking from one of the apartment
2 buildings towards the car'."

3 Q So, unclear whether they were both walking from
4 the apartment building, or just one of them, right?

5 A Correct.

6 Q And then if you turn to the next page. Can you
7 read the line on the -- and this would be the second page
8 of that Lotus Note, right?

9 A Yes.

10 Q And can you read the line on the second page of
11 that Lotus Note for me, please.

12 A "Stated she did not see which way the suspects
13 ran after the shooting."

14 Q And suspects is plural, correct?

15 A Yes, ma'am.

16 Q And that's your language that you used in that
17 Lotus Note, right?

18 A Yes.

19 Q Okay.

20 MS. LEVI: I move to admit Defense Exhibit 13
21 into evidence --

22 MS. O'HARA: 12.

23 THE COURT: That's 12.

24 MR. CONVERSE: This is 12 --

25 MS. LEVI: 12.

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1 MS. O'HARA: No objection, Your Honor.

2 THE COURT: It's admitted.

3 (Defense's Exhibit 12, Lotus Note/Progress Report of
4 April 30, 2014, is identified and admitted into evidence.)

5 BY MS. LEVI

6 Q And then, Detective Converse, the Assistant
7 State's Attorney asked you whether, when you did your
8 initial file review, you had Ms. Rihanna Allen's photo
9 array completed. And you didn't, right?

10 A No.

11 Q But you did have Mr. Holloway's photo array
12 completed at the time of your initial file review, right?

13 A It had attempted to have been shown, yes.

14 Q Right. The one you considered to be evidence,
15 correct?

16 A Yes.

17 Q And you didn't present that to her obviously,
18 right?

19 A No, I did not.

20 Q There's no prohibition against doing another
21 case file review, right?

22 A No.

23 Q And in fact, you know you have an ongoing duty
24 to disclose evidence, as you get it, to the State's
25 Attorney, right?

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1 A Yes.

2 Q You know that we don't play hide-and-seek with
3 evidence, right?

4 A Yes.

5 Q But in this case, we had to seek to find the
6 evidence from you, right?

7 MS. O'HARA: Objection.

8 THE COURT: All right. Sustained. Next
9 question.

10 MS. LEVI: Okay.

11 MS. LEVI: I just again received -- I subpoenaed
12 documents for the last hearing, if I could just -- this
13 may be mildly outside the scope, but just the last thing I
14 want to ask him about, Your Honor?

15 THE COURT: Okay.

16 MS. O'HARA: Can I see the (inaudible)?

17 MS. LEVI: It's just this number of total cases
18 he's done, in the detective -- in the DDU database.

19 MS. O'HARA: Okay.

20 MS. LEVI: This doesn't have a business
21 certification (showing document to Opposing Counsel).
22 Okay.

23 MS. O'HARA: I understand.

24 BY MS. LEVI

25 Q I'm going to show you what's being marked for

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1 identification purposes as Defense Exhibit 13. You may or
2 may not know what it is. Have you seen this before?

3 A Yes.

4 Q Can you tell the Court what that is.

5 A It appears to be a Detective Status Report.

6 Q And whose name is on that?

7 A Mine.

8 (Defense's Exhibit 13 is marked for identification.)

9 BY MS. LEVI

10 Q And at the top, it says the dates that that
11 covers. Can you tell me the dates that that covers.

12 A On this sheet, November 1st, 2008 to May 28th,
13 2015.

14 Q And that's the number of cases you've had in
15 that time period, correct?

16 MS. O'HARA: Objection.

17 THE COURT: Overruled.

18 MR. CONVERSE: I don't know where you got this,
19 and I can't --

20 BY MS. LEVI

21 Q Okay --

22 A -- stipulate to this --

23 Q -- that's fine. That's fine. The police
24 department indicated on that paper that you've had 318
25 cases. Is it fair to say that that's roughly the number

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1 since 2008, the number of cases that you have been
2 involved in, or have been assigned to you?

3 A I can't stipulate to that fact.

4 Q Okay. Well, can you estimate between 2008 and
5 2015, how many cases you've been involved in?

6 MS. O'HARA: Objection.

7 MR. CONVERSE: I can't estimate --

8 THE COURT: All right. Overruled.

9 MR. CONVERSE: I can't estimate.

10 THE COURT: Okay. Next question.

11 MS. LEVI: Okay. I don't have any further
12 questions for him.

13 THE COURT: Okay. Anything else?

14 MS. O'HARA: No.

15 THE COURT: All right. Sir, you can step down.
16 Your next witness?

17 MR. CONVERSE: Do you want these items, Your
18 Honor?

19 THE COURT: Yes. You can give those to Madame
20 Clerk, please. And that last document, did you mark that?

21 THE CLERK: Yes.

22 MS. LEVI: I did, but it wasn't admitted,
23 because he couldn't --

24 THE COURT: Defense Exhibit No. 13 --

25 THE CLERK: 13.

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1 THE COURT: All right. Okay.

2 THE CLERK: As ID.

3 THE COURT: Okay.

4 MS. LEVI: And I was hoping to have, Your Honor,
5 the detective from the --

6 MS. O'HARA: ATT or WATF?

7 MS. LEVI: -- whichever one was responsible for
8 gathering the information on the Stingray. I think both
9 of them would probably be necessary --

10 MS. O'HARA: Your Honor, I have present, as I
11 had present before, Detective Mike Spinatto, from WATF. I
12 have present, Detective John Haley from ATT. I can
13 summarize that Detective John Haley works at the ATT Unit.

14 They are the unit that actually would be able to
15 speak to the use of the Stingray, and the -- I believe the
16 procedure that they used to identify location where they
17 brought WATF to assist in the arrest of Mr. Andrews.

18 THE COURT: Okay. Well --

19 MS. O'HARA: So, I'm not sure which one

20 THE COURT: -- Ms. Levi, who do you want --

21 MS. O'HARA: -- Ms. Levi --

22 THE COURT: -- who do you want to testify?

23 MS. LEVI: I thought they're -- they're both
24 here today?

25 MS. O'HARA: They're both here, yep (inaudible).

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1 MS. LEVI: Well I don't know which one is
2 responsible for -- which one, I don't know. So, I guess
3 I'll take either one.

4 MS. O'HARA: Okay. Let me start with -- I'll
5 bring in Detective Haley. Detective Haley, could you go
6 ahead and take the stand (inaudible) --

7 THE COURT: Come on over here, sir.

8 MS. O'HARA: That's fine, yep.

9 THE CLERK: Remain standing, and raise your
10 right hand, please.

11 JOHN HALEY

12 (A witness, ordered to be produced by the Court,
13 produced by the State, called by the Defense, was sworn
14 according to law, resumes the witness stand and continues
15 testifying as follows:)

16 MR. HALEY: Yes, (inaudible).

17 CLERK: Okay. You can have a seat. Once you're
18 situated, make sure you speak into the microphone. And
19 state your name and assignment for the record.

20 MR. HALEY: Detective John Haley, Baltimore City
21 Police, ATT Unit, Advance Technical Team.

22 THE CLERK: Thank you.

23 THE COURT: Go ahead, Counsel.

24 DIRECT EXAMINATION

25 BY MS. LEVI

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1 Q Detective Haley, tell me what you do for the
2 Advance Technical Team, please.

3 A We do all the electronic surveillance -- excuse
4 me -- for the police department.

5 Q And what exactly is your role?

6 A If we're discussing this case, my role was going
7 to be to help locate the gentleman that had a warrant in
8 this incident.

9 Q And how do you get called in to do that?

10 A What happened in this case was, Detective
11 Spenotto from our WATF, which is the Warrant Apprehension
12 Unit, apparently interviewed somebody -- got a phone
13 number. He then responds down here to the Circuit Court,
14 sees Judge Barry Williams, and gets a Court Order signed.

15 He then sends the Court Order down to our
16 office, depending on what the carrier is, Verizon, Sprint,
17 T-Mobile, AT&T. We then send it to them. I ask for
18 subscriber information, call-detail records.

19 They provide us with GPS locations, in this
20 case. And once we get all the information, then we have
21 equipment that we can go out and locate cell phones.

22 Q Okay. When you say, we have equipment that we
23 can locate cell phones, you're talking about the Stingray
24 equipment, is that what was used in this case?

25 A Yeah, it's called the Hailstorm. It used to be

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1 -- Stingray is kind of first generation.

2 Q Okay. when did the Hailstorm come in to be?

3 A Probably about two years ago.

4 Q Pretty sophisticated?

5 A I'd say, yes.

6 Q So, it doesn't just locate a phone, right?

7 A Well, I'm not sure what you're asking.

8 Q It means that you can go into someone's phone,
9 and grab all the data on that phone with the Hailstorm,
10 right?

11 A No.

12 Q Tell me what the Hailstorm does.

13 A What we get from the phone company is the
14 subscriber information. So, when we get the subscriber
15 information, it has a [sic] identifier on there, if you
16 will, a serial number. We put that into the Hailstorm
17 equipment.

18 And the Hailstorm equipment acts like a cell
19 tower. So, we go into a certain area, and basically, the
20 equipment is looking for that particular identifier, that
21 serial number.

22 Q Okay. And so, if a person is inside of a home,
23 that equipment peers over the wall of the home, to see if
24 that cell phone is behind the wall of that house, right?

25 A Yes.

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1 Q And it sends an electronic transmission through
2 the wall of that house, correct?

3 A Yes.

4 Q Did you get a separate search warrant for that
5 search into the home?

6 A You'd have to talk to Detective Spinatto about
7 that. Because he's the one that got the Court Order
8 signed.

9 Q Did you do the search? You conducted the
10 equipment in this -- you operated --

11 A Yes.

12 Q -- the equipment?

13 A Yes.

14 Q And you didn't have a -- did you have a warrant
15 in your hand to go into that address when you used the
16 Hailstorm machine to peer into -- lots of people's homes,
17 actually, right?

18 MS. O'HARA: Objection.

19 THE COURT: Counsel, I mean, there's not a jury
20 here.

21 MS. LEVI: Um-hum.

22 THE COURT: -- I mean, I don't -- I mean, I
23 think I understand. It basically pings the phone.

24 MS. LEVI: Okay.

25 THE COURT: And there's an electronic device

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1 going back -- I don't think anybody's peering in. If you
2 want to metaphorically refer to it, that's fine. I mean,
3 I don't think it necessarily hinders your legal argument
4 or not. But I think it's electronically, they send a
5 signal, just like when you call in your -- if you use your
6 cell phone in your house, it pings off a tower.

7 MS. LEVI: Well, let's -- if I may -- let's not
8 assume that, right.

9 BY MS. LEVI

10 Q Because you're familiar with putting a GPS
11 tracking device on a vehicle, right?

12 A No.

13 Q You've never done --

14 A No.

15 Q -- anything like that?

16 A No, ma'am.

17 Q Tell me all of the information the Hailstorm can
18 retrieve from a phone.

19 A It's going to retrieve, like I said before, the
20 serial number of the phone, depending on what kind of
21 phone it is. It's going to -- there's [sic] different
22 identifiers. Like for Sprint, in this case, it's called
23 the MSID. And that's like a ten-digit -- like a ten-digit
24 number. So, it's retrieving that. And there's also the
25 electronic serial number. It's retrieving that. And

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1 that's really it.

2 Q Can you capture the telephone calls as they're
3 being made?

4 A No.

5 Q And how do you know where the phone -- and it
6 doesn't capture any data on the phone?

7 A No.

8 Q Are you sure?

9 A Yes.

10 Q So, how do you get information about where the
11 phone is on the machine?

12 A Because when it captures that identifier that
13 you put into the machine or the equipment, it then tells
14 you -- it looks like a clock on the equipment. And it
15 tells you where the signal's coming from, like 12, 1, 2, 3
16 o'clock (indicating).

17 And it will give you like a reading. Like if it
18 says 1:00 at like an 80, well, then you know that you're
19 kind of close to it. But if it says 1:00 at like a 40,
20 then you know that you're probably within, I don't know,
21 probably, you know, 20 yards of it.

22 Q The person doesn't have to be using their phone
23 for you to get that information, do they?

24 A Actually, if they're on their phone, then
25 they're already connected to -- in this case, the Sprint

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1 network. And we're not going to be able to pull them off
2 of that until they're -- until they hang -- until they
3 hang the call up.

4 Q So, they hang the call up. And the phone can be
5 in their pocket, right?

6 A Correct.

7 Q And then you're reaching in to grab an
8 electronic signal about where that phone is? It's not
9 pinging, in other words, right?

10 MS. O'HARA: Objection.

11 MR. HALEY: Right.

12 THE COURT: Overruled.

13 MR. HALEY: Yeah, ma'am. Like I said before,
14 we're --

15 BY MS. LEVI

16 Q I'm sorry, the question was, it's not pinging,
17 right?

18 A I don't understand pinging.

19 Q Pinging means that when a call is made, it will
20 ping to a cell tower, to let you know where the call is
21 coming from. That's not what --

22 MS. O'HARA: Objection.

23 BY MS. LEVI

24 Q -- happens, right?

25 THE COURT: Overruled.

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1 MR. HALEY: Like I said, our equipment acts like
2 a cell tower. So, it draws the phone to our equipment.

3 BY MS. LEVI

4 Q But you just said, if the person's on the phone,
5 your equipment won't work, right?

6 A Correct.

7 Q So, it doesn't act like a cell tower, because
8 you can find the phone only when they are not on the
9 phone, correct?

10 A Well, I would say it does act like a cell tower,
11 because the only time that you're going to connect -- the
12 only time that you're going to connect to the network, or
13 to a tower is when you go to try to use it.

14 Q But you're connecting to where the phone is,
15 when they're not on the phone, didn't you just say that

16 A Maybe I'm getting confused, or I'm not
17 understanding what you're asking me.

18 Q My question to you was, for example, I have my
19 phone in my pocket. And I'm sitting in my house, right?

20 A Okay.

21 Q And you want to know where I am, correct?

22 A Okay.

23 Q Yes?

24 A Yes.

25 Q And you're driving through my neighborhood,

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1 right?

2 A Okay.

3 Q Looking for me, correct?

4 A Correct.

5 Q When I am not on my phone, you will drive by my
6 house, and you will get a signal from my phone indicating
7 where I am, right?

8 A Correct.

9 Q If I am using the phone, you won't get that
10 signal, right?

11 A Correct.

12 Q So, the phone cannot be in use. You are
13 searching for my phone as you're driving through my
14 neighborhood, right?

15 A Yes.

16 Q And in order to get to my phone, you are sending
17 an electronic signal into my house, right?

18 A Yes.

19 Q You didn't do the application for the search
20 warrant?

21 A No, ma'am.

22 Q You didn't get a separate search warrant for
23 that activity to go into someone's home, and search for
24 the phone, did you?

25 A I don't know if Detective Spinatto -- I know he

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1 got a Court Order. I don't know if they got the actual --
2 that actual -- for a while, we were actually getting a
3 Court Order and search warrants. And I don't know if, in
4 this case, he was getting -- if he got both or not. I
5 don't have that in front of me. I don't know if
6 Ms. O'Hara has it, or if you have it, or not.

7 Q Okay. So, you conduct a search, and you don't
8 necessarily stop to look to see if you have a search
9 warrant for that?

10 A Well --

11 MS. O'HARA: Objection.

12 THE COURT: Overruled.

13 MR. HALEY: -- I mean, not all the time was it
14 required.

15 BY MS. LEVI

16 Q By whom?

17 A By the courts.

18 Q When did you think it started to be required
19 that you needed a search warrant for that?

20 A Well, it's kind of -- it's kind of changed a few
21 times, ma'am, in the past few years.

22 Q What's your understanding how it's changed?

23 A Well, because first, we were just getting Court
24 Orders, and everything was okay. And then they said they
25 wanted us to not only get a Court Order, but then we went

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1 down to the District Court, and got a search warrant. And
2 now it's back to just getting Court Order.

3 Q So, when you say, you used to go get a search
4 warrant, you got a separate search warrant for the use of
5 the Hailstorm equipment?

6 A A separate search warrant for whatever phone
7 number we were conducting surveillance on.

8 Q Okay. And your understanding now, is you don't
9 need one of those?

10 A Correct. It's a Court Order now.

11 Q The apartment complex where this was used. The
12 address is 4900 block -- oh, no. Do you remember the
13 address?

14 A I believe it's 5032 Clifton Avenue.

15 Q And you went there yourself, and executed the
16 warrant, or just did the Hailstorm operation?

17 A Just did the Hailstorm operation.

18 Q And who was with you?

19 A It was myself, and like I say, Detective
20 Spinatto, from WATF, I'm sure there was [sic] few other
21 detectives from my unit that was [sic] there also.

22 Q You remember, it's like a U-shape -- a series of
23 apartments, each in sort of a U-shape with sidewalks in
24 front of it? Do you remember that?

25 A Sounds about right.

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1 Q And there's probably about 30, 35 apartments
2 surrounding that U-shaped sidewalk, right?

3 A Sure.

4 Q And two doors very close to each other, then
5 another set of two doors close to each other. Do you
6 remember that?

7 A I think they're -- yeah, they're close together.

8 Q So, when you say that you get a signal within 20
9 feet, that 20 feet could mean one apartment or another
10 apartment, right?

11 A Sure, it could.

12 Q And so, you get the signal, and you send
13 officers in -- you don't know for sure, that you're
14 sending them to the right house, do you?

15 A I'd say we're probably about 99 percent sure.

16 Q How can you be 99 percent sure, if doors are
17 only 10 feet apart from each other sometimes?

18 A Well, because we go to the back of the building.
19 We go to the front of the building. And, you know, using
20 our truck, we pull up to the location. And we're relying
21 on our equipment.

22 And if it's - if the handset is right where Your
23 Honor's sitting, then the equipment should be pointing at
24 3:00. If it's pointing at 2:00, then it's going to be
25 that way (indicating). If it's 4:00, it's going to be

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1 this way (indicating). So, we do that --

2 Q So, let me --

3 A -- several times --

4 Q -- let me stop you. I'm going to stop you real
5 quick for the record. So, when you did that, you just
6 pointed towards Madame Clerk, and then His Honor, and then
7 the door. Each of those, you'd agree, are about 5 feet
8 apart?

9 A Yeah, I'm just giving you like, you know,
10 basically -- I'm not saying that's how close it is. I'm
11 just trying to give you a reference.

12 Q Okay. But my question to you earlier was, you
13 said it was about 20-foot precision, and now you're saying
14 it's about 5-foot precision. I'm just trying to
15 understand it.

16 A Well that was also a reference. Also, I was
17 just saying that it's about -- and actually, I didn't say
18 20 feet. I said 20 -- excuse me -- 20 yards.

19 Q Oh, right, 3 feet to a yard. You're right. So,
20 I'm just curious, how accurate is it?

21 A Well, I mean, I'd say it's pretty accurate.
22 Because this (indicating) is the gentleman that they were
23 looking for. And that's who they found -- that's who they
24 found.

25 Q So, the results prove the -- so, the results

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1 prove, right --

2 A Correct.

3 Q Did you go -- tell me about how the officers
4 then enter the house, after you give them the signal.

5 A They knock on the door.

6 Q WATF knocks?

7 A Yes, ma'am.

8 Q Does WATF barge in?

9 MS. O'HARA: Objection.

10 THE COURT: Overruled.

11 MR. HALEY: To my knowledge, in this case, no.
12 They knocked on the door. And I guess there was a young
13 lady that answered the door. And they asked if they --

14 BY MS. LEVI

15 Q Were you there when this --

16 A I was --

17 Q -- conversation took place, or were you in the
18 vehicle?

19 A I was outside -- I was outside. I didn't hear
20 exactly what was being said, no.

21 Q Did you go into the house?

22 A I did.

23 Q How many officers entered the house?

24 A I would say five or six.

25 Q Guns drawn?

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1 A No.

2 Q Looking for a felon charged with attempted
3 murder, in a shooting, and officers walked into the house
4 without guns drawn?

5 A No, no guns were drawn.

6 Q They just asked permission to come in?

7 A Correct.

8 Q What did they say?

9 A Like I said, I didn't hear exactly what they
10 said. I just know that they knocked on the door. A young
11 lady answered the door. I guess they asked for the
12 gentleman. Walked in. When I walked in, he was sitting
13 on the couch.

14 Q And what were the officers wearing in your
15 recollection?

16 A Basically like, shorts, t-shirts, vests, and
17 then a black vest over top that says, "Police."

18 Q How many were there, five?

19 A Five or six.

20 Q Do you remember their names?

21 A I know it was myself that entered the location.
22 Detective Spinatto, that's really all that I remember
23 being there.

24 Q So, you were essentially part of the Warrant
25 Apprehension Team, right?

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1 A No. I wouldn't consider myself that, no.

2 Q You were there?

3 A I was there.

4 Q You wrote a report?

5 A No, I didn't.

6 Q You didn't document your involvement with
7 Stingray?

8 A No.

9 Q You didn't document any of your involvement in
10 the execution of the warrant?

11 A Nope.

12 Q When a warrant's executed, your department
13 requires report writing, correct?

14 A That would be Spinatto's, it's his case --

15 Q How many times --

16 A -- we're just assisting --

17 Q -- do you operate Hailstorm, average in a month?

18 MS. O'HARA: Objection.

19 THE COURT: Sustained. Next question.

20 BY MS. LEVI

21 Q You do this -- every time you use Hailstorm, you
22 don't write a report?

23 A There's [sic] cases that we write reports, yes.

24 Q But if I didn't -- if nobody came asking, it's
25 possible, no one would ever know you used Hailstorm in

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1 this case?

2 A Yeah, I guess if nobody asked, no.

3 Q Who did you tell?

4 A Well, when asked about it, and Ms. O'Hara
5 contacted me.

6 Q When?

7 A When did she contact me?

8 Q Yes.

9 A Maybe a month ago.

10 Q First time anybody asked you if electronic
11 surveillance was used in this case?

12 A Yes.

13 Q Have you since wrote any reports?

14 A For this case?

15 Q Um-hum.

16 A No.

17 MS. LEVI: Court's indulgence?

18 THE COURT: (No audible response.)

19 BY MS. LEVI

20 Q Can you tell me the make and model of the
21 Hailstorm machine that you're using?

22 MS. O'HARA: Objection.

23 THE COURT: Sustained.

24

25 MS. LEVI: Court's indulgence?

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1 THE COURT: (No audible response.)

2 MS. LEVI: (Consulting with Client.)

3 BY MS. LEVI

4 Q How many people in this investigation knew you
5 used Hailstorm?

6 MS. O'HARA: Objection.

7 THE COURT: No, overruled.

8 MR. HALEY: I mean, everybody that was at the
9 location that day.

10 BY MS. LEVI

11 Q Those five to six officers, including Spinatto.
12 And can you tell me -- and I might have asked you this
13 before -- but can tell me any of their other names?

14 A I just know that Spinatto was there. I was
15 there. And like I say, I'm sure there was a few other
16 people from my unit there. I mean, if you need it, I
17 could probably research that, and get you the names from
18 my unit for --

19 Q You'd just look at the records, the time records
20 that day, or would you look at another report --

21 A Correct, like who was working that day, the
22 overtime sheets, that sort of thing.

23 Q Was Detective Converse there?

24 A No.

25 Q Did you see any animals in the house when you

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1 went in?

2 MS. O'HARA: Objection.

3 THE COURT: Sustained.

4 MS. LEVI: Okay. No further questions.

5 THE COURT: All right.

6 MS. O'HARA: I have nothing from Detective
7 Haley.

8 THE COURT: All right. Sir, you can step down.
9 Your next witness?

10 MS. O'HARA: I assume you want to call Detective
11 Spinatto --

12 MS. LEVI: Yes, please --

13 MR. HALEY: Thanks, Your Honor.

14 THE COURT: You're welcome, sir. See you.

15 MS. O'HARA: John, would you grab Michael.

16 MR. HALEY: Yeah, sure.

17 MS. O'HARA: Well, actually, then you're all
18 set.

19 MR. HALEY: Okay.

20 MS. O'HARA: Okay.

21 MR. ANDREWS: (Consulting with Counsel.)

22 THE COURT: Sir, do you want to come right over
23 here --

24 MS. O'HARA: Detective Spinatto, if you would go
25 ahead and take the witness stand. And then just remain

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1 standing, sir.

2 THE CLERK: Raise your right hand, please.

3 MICHAEL SPINATTO

4 (A witness, ordered to be produced by the Court,
5 produced by the State, called by the Defense, was sworn
6 according to law, resumes the witness stand and continues
7 testifying as follows:)

8 MR. SPINATTO: I do.

9 CLERK: Okay. You can have a seat. Once you
10 have a seat and get situated, make sure you speak into the
11 microphone. State your name and assignment for the
12 record.

13 MR. SPINATTO: Detective Michael Spinatto,
14 Warrant Apprehension Task Force.

15 THE CLERK: Thank you.

16 THE COURT: Go ahead, Counsel.

17 DIRECT EXAMINATION

18 BY MS. LEVI

19 Q Detective Spinatto, tell me -- well, how long
20 have you worked with the Baltimore City Police Department?

21 A Come July, it will be 14 years.

22 Q And how long have you been with WATF?

23 A Six years.

24 Q And what exactly do you do -- what does WATF do?

25 A WATF serves warrants throughout the city. All

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1 arrest warrants, from anything from murder to traffic
2 warrants.

3 Q Dangerous business?

4 A Yes, ma'am.

5 Q When you go in to execute a warrant for a felon,
6 what's the procedure?

7 A Well, it starts way back when we first receive
8 the warrant.

9 Q Okay.

10 A We conduct a background investigation into the
11 individual that's wanted on the -- wanted on the warrant.
12 And their family, friends, associates, job, his past
13 criminal history, things of that nature.

14 Q And you memorialize that investigation?

15 A We print out our photos, and some information of
16 the family. But after the individual is captured, we
17 don't keep track of that information.

18 Q You destroy it?

19 A Yes, ma'am.

20 Q And then what?

21 A After he's captured, we transport him to
22 whatever districts who wrote the warrant for him, so he
23 can be interviewed.

24 Q Well, let's go back and focus on this case. By
25 this case, I mean, the State versus Kerron Andrews.

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1 A Um-hum.

2 Q You remember apprehending Mr. Andrews on -- the
3 date of his arrest, do you remember?

4 A I can't remember the exact date off hand, I'm
5 sorry.

6 Q Were you there to participate in Mr. Andrews'
7 arrest?

8 A Yes.

9 Q Did you write a report on that day?

10 A I wrote a 24-hour report.

11 Q When did you write the 24-hour report?

12 A The date of his arrest.

13 Q You didn't write any other reports?

14 A No, ma'am.

15 Q Who was with you that day?

16 A Myself, members of Warrant Apprehension Task
17 Force, and --

18 Q Which members?

19 A Sergeant Price, I want to say Detective
20 Hendricks, Detective White, Detective Glanvell (phonet)
21 Detective Williams, and I believe Detective Thompson.

22 Q When you say, I believe, you don't remember for
23 sure?

24 A A hundred percent, no, ma'am. It was over a
25 year ago.

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1 MS. LEVI: Court's indulgence, please?

2 THE COURT: (No audible response.)

3 BY MS. LEVI

4 Q So, you ride along in the car -- well, actually
5 hold on for one second. Tell me about the arrest this
6 day. How did you come to find out where Mr. Andrews was?

7 A Mr. Andrews was located using our Advance
8 Technical Team, and --

9 Q Okay. And what authority did you have to use
10 the Advanced?

11 A I obtained a DNR, a trap and trace, for a
12 cell --

13 Q You obtained the DNR?

14 A Yes, ma'am.

15 Q You did the Affidavit?

16 A Yes, ma'am.

17 Q Can you show me in the Affidavit where it says
18 you can use surreptitious technology to locate Mr. Andrews
19 in the Affidavit?

20 A If you can show me a copy of the Affidavit, I
21 would look through it. What information are you looking
22 for specifically in it?

23 Q I'm looking for the information that shows
24 you're going to do something besides what you asked for.

25 MS. O'HARA: Objection.

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1 THE COURT: Well, I'm not quite --

2 BY MS. LEVI

3 Q Do you have --

4 THE COURT: -- sure what that is, why don't you
5 ask a question --

6 BY MS. LEVI

7 Q -- you don't have a case file with you?

8 A No, ma'am.

9 Q Did you submit the same application for all
10 telephone numbers in this case? Did you submit a form
11 application?

12 A It is a template. But each application is
13 different, because it's not the same circumstances
14 surrounding each individual case of how we obtain the
15 information.

16 Q But the technology piece is the same in each
17 one?

18 A Yes.

19 MS. LEVI: I'm sorry. This is what happens when
20 you finish a murder trial in one afternoon, and start
21 another hearing on the second, and you've misplaced
22 something. So, if I could have Court's indulgence for one
23 second.

24 THE COURT: (No audible response.)

25 MS. LEVI: I just want to make sure I'm getting

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1 the right application. (Consulting with Opposing
2 Counsel.) I'm sorry, Your Honor. My apologies. I can do
3 better. (Consulting with Opposing Counsel.) May I
4 approach?

5 THE COURT: Sure.

6 MS. LEVI: Thank you, Madame Clerk.

7 THE CLERK: Um-hum.

8 BY MS. LEVI

9 Q I'm going to show you what's marked for
10 identification purposes as Defense Exhibit 14. Can you
11 tell me what that is?

12 A This is a copy of the application that I made
13 for the DNR.

14 Q When you say DNR, can you?

15 A I'm sorry. It's an Application for the State of
16 Maryland for an Authorization and Installation and Use of
17 a Device Known as a Pen Registry in a Trap and Trace.

18 (Defense's Exhibit 14 is marked for identification.)

19 BY MS. LEVI

20 Q Pen Registry in Trap and Trace. And Pen
21 Registry in a Trap and Trace dates back --

22 THE COURT: Pen register.

23 MS. LEVI: Pen register -- I think he said
24 registry.

25 MR. SPINATTO: Register, I'm sorry.

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1 BY MS. LEVI

2 Q Okay. Pen register and trap and trace, right?

3 A Um-hum.

4 Q And those phrases have been around for a long
5 time, correct?

6 A As far as I know, yes, ma'am.

7 Q Can you tell me what you think pen register and
8 trap and trace means?

9 MS. O'HARA: Objection.

10 THE COURT: Overruled. Go ahead.

11 MR. SPINATTO: To the exact knowledge of it, No,
12 ma'am. I'm not part of the Advance Technical Team. My
13 knowledge is basically and solely around locating
14 individuals wanted on attempt-murder warrants.

15 BY MS. LEVI

16 Q So, you fill out the warrant for technical
17 information you're not familiar with?

18 A I fill out the application for it, and then
19 deliver it to our Advance Technical Team, who's trained on
20 this technology.

21 Q Okay --

22 A Not myself.

23 Q -- I'm going to ask you, painstakingly, to just
24 look over that document.

25 A Okay.

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1 Q And tell me, do you see phone company names on
2 there?

3 A Yes, ma'am. I do.

4 Q What phone companies do you see?

5 A Just by looking at the first page, AT&T, Sprint,
6 Nextel, Virgin Mobile, T-Mobile, Cellco Partnership DBA
7 Verizon Wireless, Cricket Communications, Inc., and any
8 other telecommunication service provider.

9 Q So, that application is telling the Court,
10 you're seeking information from those companies --

11 THE COURT: Okay. Counsel, do you want to
12 approach for a second. (Turns on white noise.)

13 BENCH CONFERENCE

14 (Bench conference begins - 11:35:26 a.m.)

15 (Counsel approach the bench, where the following
16 ensues:)

17 THE COURT: Okay. So, I've given you a lot of
18 latitude, because of the circumstances surrounding this
19 case. I'm not quite sure. I think we're on a discovery
20 issue. I'm not quite -- I guess the other question I have
21 is, there was a DNR in this case, was there a Court Order
22 to --

23 MS. O'HARA: Um-hum.

24 THE COURT: -- okay, and I'm sorry, so that was
25 provided. You had that, right?

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1 MS. LEVI: Right.

2 THE COURT: Okay. So, you got a Court Order
3 authorizing them to locate the Defendant --

4 MS. LEVI: I think that that's --

5 THE COURT: -- well, no, did you have one?
6 That's what I don't understand.

7 MS. LEVI: Through a trap and trace, through the
8 phone companies.

9 THE COURT: Well, no. Did you have the Court
10 Order?

11 MS. LEVI: I do. But I'm going to get to the
12 Court Order after I get -- I have to --

13 THE COURT: Well, no. Can I see the Court
14 Order, so I can see what -- because that makes a whole
15 different -- you know, that's a whole different issue for
16 me. I didn't know if there was any authority to get this.

17 So, I was -- and I'm not saying anyone misled
18 me. But I sort of was under the impression, this was
19 just, you know, the good ole days, where people used to
20 just get a -- you know do a Stingray, or a Trigger Fish,
21 or whatever they used to call it. And they just went out
22 there and did this --

23 MS. O'HARA: No, there's a Court Order --

24 THE COURT: -- so, you're saying there was a
25 Court Order. This is under the -- is this under the new

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1 statute?

2 MS. O'HARA: There was a Court Order, and it --

3 THE COURT: Okay. Can I see it --

4 MS. O'HARA: -- was signed by Judge Williams --

5 THE COURT: -- can I see it --

6 MS. O'HARA: Yes.

7 THE COURT: -- I mean, I --

8 (Counsel briefly return to the trial tables -

9 11:36:31 a.m.)

10 (Counsel return to the bench conference -

11 11:37:01 a.m.)

12 MS. O'HARA: My copy is --

13 MS. LEVI: Your Honor, our point is that --

14 THE COURT: Well, hang on a second, let me just
15 see it first --

16 MS. LEVI: Okay.

17 MS. O'HARA: It's on the back of that first
18 page.

19 THE COURT: Okay. So, you got a DNR. So, you
20 got the DNR Order. Okay. But there was no -- there was
21 no subsequent -- now we do it, there's actually a statute,
22 and there is a Court Order. That's the Order for the pen
23 register --

24 MS. O'HARA: The DNR, right --

25 MS. LEVI: Right.

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1 THE COURT: Okay. All right --

2 MS. LEVI: There's no Order for the Stingray.

3 THE COURT: Okay. Well, I mean, all right.

4 Whatever, but that -- okay. All right.

5 MS. LEVI: Whatever means --

6 THE COURT: (Turns off white noise.) All right.
7 Go ahead. I'm just -- I'm not -- okay. There was no --
8 there was no additional order other than -- you got an
9 Order for the DNR, or pen register trap and trace, as you
10 call it, right?

11 MR. SPINATTO: Yes, Your Honor.

12 THE COURT: Okay. No other orders, or was [sic]
13 there any warrants that were obtained?

14 MR. SPINATTO: No, Your Honor.

15 THE COURT: Okay. All right. All right.

16 BY MS. LEVI

17 Q The only other question I was going to ask is
18 where in the application for the search warrant did you
19 say you wanted to use surreptitious technology to locate
20 the Defendant?

21 THE COURT: Well, I think --

22 MR. SPINATTO: Well, this is --

23 THE COURT: -- the Order speaks for itself,
24 either giving you authority or not giving you authority.

25 MS. LEVI: Well, I think that's an argument that

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1 we would like to make that there's nothing in the
2 application -- it doesn't --

3 THE COURT: Okay. I mean, that's fine. But
4 that's not -- that may be a Motion to Suppress --

5 MS. LEVI: Okay.

6 THE COURT: -- or something. We're on discovery
7 issue. You say, gee, I didn't know about this stuff.

8 MS. LEVI: Thank you, Your Honor.

9 THE COURT: Okay.

10 MS. LEVI: Your Honor had inquired as to whether
11 there was validity of the Motion to Suppress that we
12 argued, we've been unable to address. So, I just wanted
13 to extract some information on that.

14 THE COURT: There was what? Validity to?

15 MS. LEVI: Um-hum. Back in --

16 THE COURT: Well, I'm not really worried about
17 that --

18 MS. LEVI: -- the initial hearing -- okay.

19 THE COURT: Okay.

20 MS. LEVI: All right.

21 BY MS. LEVI

22 Q You didn't do any reports about using Stingray
23 in this case, right?

24 A I didn't use the Stingray.

25 Q I'm sorry, when you say, I didn't use the

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1 Stingray?

2 A I'm not the Advance Technical Team. I don't use
3 any of the equipment to track the cell phone.

4 Q Were you present -- who did you give that Order
5 to?

6 A I faxed it down to our Advance Technical Team.
7 And Detective Haley contacted me, and said he would be
8 working on it.

9 Q And you believe that that Order authorized them
10 to use --

11 A Once it was signed by the judge --

12 Q -- surreptitious --

13 A -- I believed it was enough to do whatever they
14 do technically to locate the cellular device.

15 Q Okay. Detective Spinatto, did you drive around
16 in the car with them that day?

17 A No.

18 Q Did you follow them?

19 A We set up in the area of where they believed the
20 cell phone was first hitting at. So, as we stood by,
21 waiting for them to locate it, and narrow it down to a
22 location, after which time, they narrowed it down to the
23 5000 block of Clifton Avenue.

24 Q Okay.

25 A At which time, myself and my team responded up

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1 there with ATT.

2 Q Okay. And then what happened?

3 A They get out with their hand-held devices, and
4 narrowed it down to the location of 5032 Clifton Avenue.

5 Q How do they do that?

6 A I'm not part of the Advance Technical Team. You
7 would have to ask them.

8 Q How sure were you that you were at the right
9 location then?

10 A You would have to ask them that. I'm not part
11 of the Advance Technical Team. I can't tell you how they
12 determine whether or not that location is the correct one
13 or not.

14 Q So, now you're going into arrest somebody
15 charged with attempted murder through a shooting, right?

16 A Yes.

17 Q And you entered the door on a no-knock?

18 A No.

19 Q Tell me what happened.

20 A They said the device is in 5032 Clifton Avenue.
21 At which time, I knocked on the door. After several
22 minutes, a female responded to the door, and opened the
23 door.

24 Q And then what happened?

25 A I introduced myself to her, and told her what I

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1 was there for.

2 Q You said, my name is Detective Spinatto. I'm
3 here to arrest somebody who I believe is in this house?

4 A I can't tell you verbatim what was said.

5 Q Okay.

6 A But along the lines of, my name is Detective
7 Spinatto. I'm with the Baltimore Police Department.

8 Q And then what?

9 A We're looking for an individual wanted for an
10 attempt-murder warrant.

11 Q Okay. And then what happened?

12 A I said, we need to come in and take a look
13 around.

14 Q And you ordered her to let you into the house?

15 A No, I didn't, there was no order given.

16 Q We need to come in and take a look around, is
17 exactly what you said?

18 A Well, I didn't take that as an order. I take
19 that as asking permission.

20 Q Okay. And then what happened?

21 A After we spoke some -- I believe we spoke for
22 seven more minutes about who we were looking for, and who
23 all was in the home, she then granted us access to the
24 home to locate Kerron Andrews.

25 Q When you say, granted access, what does that

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1 mean to you?

2 A She opened the front door, and said, yes, you
3 can come in and look.

4 Q I thought the front door was already opened?

5 A Well, I'm sorry. She moved out of the doorway,
6 at which time, she let us into her home to look for the
7 individual, Kerron Andrews, wanted for attempted murder.

8 Q And at what time did you draw your weapons?

9 A I never had to draw my weapon.

10 Q What did you see when you got into the house?

11 A When I first stepped into the house, I believe
12 through the front door --

13 Q When you say, I believe?

14 A -- when I first stepped into the house -- I'm
15 sorry -- it is the kitchen of the house. Through the
16 kitchen --

17 Q So, you went in the front door or the back door?

18 A Through the front door.

19 Q So, the front door opens up into a kitchen?

20 A Yes, ma'am.

21 Q And who was going in with you at the time?

22 A Members of my squad, and members --

23 Q Which ones?

24 A -- of ATT. I can't tell you exactly who. That
25 was over a year ago. We do hundreds of warrants a year.

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1 Q Okay. Well, if you can't tell me exactly who,
2 did you write a report that day?

3 A As I told you just earlier, that I wrote a
4 24-hour report.

5 Q And you never wrote any notes that day?

6 A Just that, who was there that participated in
7 his arrest, and where he was arrested at.

8 Q Besides the 24-hour report, you wrote that
9 someplace else?

10 A No.

11 Q You're familiar --

12 MS. LEVI: Court's indulgence?

13 THE COURT: (No audible response.)

14 MS. LEVI: May I approach, Your Honor?

15 THE COURT: Sure.

16 MS. LEVI: I'm going to try to make this very
17 brief.

18 BY MS. LEVI

19 Q I'm going to show you what's been marked as
20 Defense Exhibit 15. Do you know what that is?

21 A It appears to be a copy of our General Order,
22 J-7, referencing search and seizure warrants.

23 (Defense's Exhibit 15 is marked for identification.)

24 BY MS. LEVI

25 Q Would you agree that an arrest warrant would

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1 come under a search and seizure warrant?

2 A No, I would not.

3 Q Okay. Can you tell me what regulation covers
4 executing arrest warrants?

5 A I'm not sure of the exact General Order for the
6 arrest warrants.

7 Q Can you tell me what order requires you to write
8 a report when you execute any warrant?

9 A When I execute any warrant?

10 Q Um-hum.

11 A Well, this General Order is for search and
12 seizure warrants, which we did not execute a search and
13 seizure warrant.

14 Q Okay.

15 A And at the time, I detained Mr. Andrews, when I
16 located him inside of 5032 Clifton Avenue, and he was
17 transported. He was arrested by the detectives at the
18 district.

19 Q Semantics, but arrest is a seizure, right?

20 MS. O'HARA: Objection.

21 THE COURT: (No audible response.)

22 BY MS. LEVI

23 Q Can you look through that document for me, and
24 show me where it talks about the importance of writing
25 reports for executing a search and seizure warrant.

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1 A I can look through it. But we didn't execute a
2 search and seizure warrant --

3 Q I'm just asking that question --

4 BY THE COURT

5 Q Well, the bottom line is, did you write a
6 report?

7 A I wrote my 24-hour report just referencing --

8 Q Did you write any other reports?

9 A No, Your Honor.

10 Q Okay.

11 BY MS. LEVI

12 Q Did you do a diagram of where everybody was
13 found when you went into the house?

14 A No.

15 Q You reported that you found Mr. Andrews near a
16 weapon --

17 A No, I did not.

18 Q -- to anybody? Was there any reports written
19 that day from the execution of the search warrant that
20 you're aware of?

21 A Not that I'm aware of. But you would have to
22 speak to --

23 THE COURT: Okay, was there -- there wasn't a --
24 was there a search warrant?

25 MS. LEVI: After then went into the house, and

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1 arrested him, then they went back and got a search and
2 seizure warrant.

3 THE COURT: Okay.

4 BY MS. LEVI

5 Q But your original apprehension -- you originally
6 apprehended him?

7 A Yes --

8 Q You, physically, yourself?

9 A Yes.

10 Q And you found him, where?

11 A In the living room of the home.

12 Q Where specifically in the living room?

13 A Seated on the couch, to the right.

14 Q How do you know that?

15 A Because I'm the one who arrested him.

16 Q And where did you memorialize where you found
17 him?

18 A I didn't memorialize anywhere. I contacted
19 Detective Converse, and told him we located [sic] inside
20 5032 Clifton Avenue.

21 Q Okay. And who else did you see in the home?

22 A I believe there was [sic] numerous other
23 individuals. But I did not document who they were.

24 Q And what kind of animals did you see in the
25 home?

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1 MS. O'HARA: Objection.

2 THE COURT: What's the relevance of that? I
3 mean, certainly for this hearing? Okay. I'll sustain the
4 objection. Go ahead. Next question.

5 BY MS. LEVI

6 Q You knew they used the electronic surveillance
7 in this case, right?

8 A Yes.

9 Q And you gave that information to the State's
10 Attorney?

11 A The copy of the DNR?

12 Q That you also used the surreptitious equipment?

13 MS. O'HARA: Objection.

14 THE COURT: No. Did you give any of that
15 information to the State's Attorney?

16 MR. SPINATTO: The only thing I turned over to
17 the State's Attorney's Office is a copy of my 24-hour
18 report. Prior to meeting with her, she had already had a
19 copy of my DNR.

20 THE COURT: Okay. Next question.

21 BY MS. LEVI

22 Q When did she ask you whether you used Stingray
23 -- I'm sorry, I keep saying Stingray, I have to remember
24 Hailstorm. When did she ask you about whether Hailstorm
25 was used in this case?

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1 A I never used Hailstorm. I'm not part of the
2 Advance Technical Team.

3 Q Okay. But you were aware that it was used?

4 A I'm not sure what the equipment is that they
5 used on -- I'm not trained on the equipment, that I keep
6 telling you about. My job is to locate Kerron Andrews.

7 Q Okay. My question is, you were aware that some
8 equipment was used, because they're the ones who told you
9 to go into the house, right?

10 A Yes.

11 Q You did not relay any of that information about
12 the surreptitious equipment to the State's Attorney, did
13 you?

14 A No. But --

15 Q Yes or no --

16 A No. I didn't relay any of that to the State's
17 Attorney's Office.

18 Q Okay.

19 MS. LEVI: No more questions.

20 THE COURT: All right.

21 MS. O'HARA: Very briefly.

22 CROSS-EXAMINATION

23 BY MS. O'HARA

24 Q Detective Spinatto, so that we can establish a
25 very clear time line, the legal authority you had to

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1 locate -- or the police -- that Baltimore City Police
2 Department had to locate the handset (443) 208-2776,
3 identified to Kerron Andrews, was the DNR, correct?

4 A Yes, ma'am.

5 Q And that was signed by Judge Williams on May
6 5th, prior to locating the cell phone, correct?

7 A Yes.

8 Q And then, once you arrived to Clifton Avenue
9 with the ATT Unit, you knocked on the door, spoke with a
10 woman who answered the door, correct?

11 A Yes.

12 Q And that woman at that time, gave you consent to
13 come into the house --

14 MS. LEVI: Objection.

15 BY MS. O'HARA

16 Q -- correct?

17 A Yes.

18 THE COURT: Overruled.

19 BY MS. O'HARA

20 Q And meanwhile, you had an arrest warrant in hand
21 for Kerron Andrews, correct?

22 A Yes.

23 Q That arrest warrant had been signed and executed
24 before May 5th, 2014, correct?

25 A Yes.

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1 MS. LEVI: Your Honor, I'm going to object to
2 leading questions. The Motion to Suppress, we haven't
3 been able to file. So, the leading questions I think are
4 inappropriate at this point. Because the point is that we
5 haven't been able to file the 4-252 motion.

6 And I don't want the detective being suggested
7 any answers in advance of that proceeding we're entitled
8 to under the rules, and have been not able to proceed on.

9 THE COURT: Okay. Well, I think it's within the
10 scope of your questions. So I'm going to allow them in.
11 I mean, if you didn't want to go there, you didn't have to
12 go there.

13 MS. LEVI: Okay.

14 THE COURT: You decided to go there. Okay.
15 Overruled. Go ahead.

16 BY MS. O'HARA

17 Q So, the legal authority you had to arrest the
18 Defendant, Kerron Andrews, was the arrest warrant,
19 correct?

20 A Yes.

21 Q And you, in fact, yourself arrested Kerron
22 Andrews -- or at least detained him, as soon as you saw
23 him in 5032 Clifton Avenue?

24 A Yes.

25 Q Okay. When you saw him sitting on the couch,

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1 did you put your hands on Kerron Andrews?

2 A Yes.

3 Q Okay. And did you detain him using handcuffs?

4 A Yes.

5 Q And at that time did you search him?

6 A Yes.

7 Q Incident to your detention of Mr. Andrews, did
8 you find the phone?

9 A Yes.

10 Q Where did you find the phone?

11 A In one of his pockets. I'm not sure which pocket
12 I located it from.

13 Q Do you know if it was a pants pocket, jacket
14 pocket, or outer garment?

15 A Pants pocket.

16 Q A pants pocket. And at that time, did you take
17 the phone out of his pocket?

18 A Yes.

19 Q What, if anything, did you do with the phone?

20 A I turned it over -- anything that he had on his
21 person, at the time of his detention -- I turned it over
22 to the detectives at the Southwest District.

23 Q Okay. And is that when you got back to the
24 Southwest District?

25 A Yes.

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1 Q Okay. And then were you responsible for any
2 further searches at all that day?

3 A No.

4 MS. O'HARA: I have nothing further from
5 Detective Spinatto.

6 MS. LEVI: I don't have any more questions.

7 THE COURT: All right. Sir, you can step down.
8 Your next witness.

9 MS. LEVI: I think we're done.

10 THE COURT: Okay.

11 MS. O'HARA: Your Honor, the State has no case
12 -- no rebuttal case, I should say -- well, no State's
13 case.

14 THE COURT: All right. All right. I think
15 we're on -- here in a Request for Sanctions. Let me just
16 -- all right. Go ahead, Ms. Levi.

17 DEFENSE'S REQUEST TO POSTPONE BRIEFING

18 MS. LEVI: Well, Your Honor, I would just ask
19 for an opportunity to brief. I have been in trial for the
20 last three days. I haven't had time to -- I mean, I was
21 up until the wee hours of the morning on a Motion to
22 Dismiss for the mistrial.

23 I think it would be to Mr. Andrews' benefit, if
24 I took a few minutes to review all the notes. Having just
25 concluded that murder trial yesterday afternoon, and filed

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1 some supplemental briefing.

2 THE COURT: When is the trial date for this?

3 MS. LEVI: July --

4 MS. O'HARA: July 2nd.

5 THE COURT: July, what, I'm sorry?

6 MS. O'HARA: July 2nd, Your Honor.

7 THE COURT: Well --

8 MS. LEVI: If I can have until Friday, even.

9 What is today, Thursday?

10 COURT'S SUGGESTION RE DEFENSE'S REQUEST TO POSTPONE

11 THE COURT: -- well, why don't you just --

12 Counsel, I have a meeting at two, why don't you come back
13 at three and tell me where we are.

14 MS. O'HARA: Your Honor, I have a doctor's
15 appointment at 2:30. If I could just -- you know, I'll
16 cancel it. Never mind. That's fine --

17 THE COURT: Well, no. I don't --

18 MS. O'HARA: No, no, no, that's fine. I would
19 rather get the --

20 THE COURT: -- I would just assume try -- this
21 thing is becoming a bit chopped up as it is. I mean --

22 MS. O'HARA: I can cancel it, it's fine --

23 THE COURT: -- well, I just want to find out
24 what -- maybe, so I understand it, before we leave here,
25 based on what -- well, let me just ask you. Let's stay

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1 away a sense from the law -- what are you saying -- what
2 are you making clear to me what you didn't get -- I'm
3 sorry what you didn't receive that you should have
4 received. Why don't we, at least maybe, can I get to
5 that?

6 MS. LEVI: Okay. I think that's fine --

7 THE COURT: All right.

8 DEFENSE'S DISCUSSION ON ITEMS IN DISCOVERY NOT RECEIVED

9 MS. LEVI: So, number one is the photo array of
10 Ajabar Holloway that was conducted May of 2014.

11 THE COURT: Okay.

12 MS. LEVI: Number two is the photo array
13 conducted with Rihanna Allen in January of 2015.

14 THE COURT: Can I just -- so, I understand,
15 (inaudible) all right. Did either Mr. Holloway or Ms.
16 Allen -- it's Mr. Holloway or Miss -- Mr. [sic] Allen --

17 MS. O'HARA: Correct.

18 THE COURT: -- did either of them -- have they
19 ever identified the Defendant as the shooter, or --

20 MS. O'HARA: No.

21 THE COURT: -- the person involved --

22 MS. LEVI: No.

23 THE COURT: Okay. All right. Okay. I think --

24 MS. LEVI: Mr. Holloway made no identification,
25 but looked at the pictures. And Ms. Allen made a negative

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1 -- you know, said she did not see the shooter in there.

2 THE COURT: Okay. And there also were the Lotus
3 Notes, that there was money that was found in the closet.
4 And then there was a witness, Ms. Brittany Griffin, who
5 claimed the money was hers?

6 MS. O'HARA: Correct.

7 THE COURT: And when did you receive that?

8 MS. LEVI: Well, technically, I got it on Friday
9 before the last hearing. But the disc was corrupt, so I
10 got it on Monday.

11 THE COURT: Okay.

12 MS. LEVI: The date of the last hearing we had
13 was May -- I'm sorry, I don't have my calendar open. The
14 date of the last hearing was three weeks ago, roughly.

15 MS. O'HARA: Two weeks ago.

16 MS. LEVI: Two weeks ago.

17 THE COURT: May 21st, that's what I have here.

18 MS. LEVI: And that's when I also got the photo
19 array from Ajabar Holloway. Ms. O'Hara can correct me if
20 I'm wrong on any of these dates. And then the photo array
21 for Ms. Allen came a few days prior to that via e-mail, I
22 think May --

23 MS. O'HARA: Eleventh.

24 MS. LEVI: -- 11th.

25 THE COURT: Okay.

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1 MS. LEVI: 2015.

2 THE COURT: All right. What else then?

3 MS. LEVI: Um --

4 THE COURT: The information --

5 MS. O'HARA: Your Honor, just my records
6 indicate May 15th was the date that Ms. Levi was searching
7 for.

8 MS. LEVI: For the --

9 MS. O'HARA: For the other documents --

10 MS. LEVI: -- the originals? Okay.

11 MS. O'HARA: So, May 11th was Ms. Rihanna
12 Allen's photo array that you received via e-mail. We were
13 in Part 46 May 12th. And then May 15th was when the other
14 items was [sic] last -- the amount of items were
15 discussed.

16 MS. LEVI: Right.

17 THE COURT: Okay.

18 MS. LEVI: And that was the first one that the
19 disc was corrupt. So then technically, I was only able to
20 open it the next -- the following Monday. But the State
21 did make a good-faith effort to get it to me on Friday.
22 And I couldn't open it over the weekend --

23 THE COURT: Okay.

24 MS. LEVI: -- and got it on Monday. And then
25 the next information was the information, that

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1 surreptitious electronic surveillance equipment was used.
2 When we got the search and seizure warrants in this case,
3 and information in the reports that Mr. Andrews was
4 located, we immediately suspected that there was
5 surreptitious information used. I asked, you know --

6 THE COURT: So, when was that?

7 MS. O'HARA: May 15th.

8 MS. LEVI: When was that provided, or when did I
9 inquire as to it?

10 THE COURT: Well when did you suspect that they
11 had -- that they had used this device?

12 MS. LEVI: From the jump. From the time that I
13 got the discovery in the beginning.

14 THE COURT: Okay.

15 MS. LEVI: So, I inquired orally in casual
16 conversations. And then, did a formal discovery request
17 November 3rd, 2014 in a pleading, asking --

18 THE COURT: Okay.

19 MS. LEVI: -- for all information related to the
20 surreptitious technology, all information of any kind
21 related to how he was located at that address. Any
22 reports, documents, information. That's the formal
23 discovery request that we went through at the last
24 proceeding.

25 THE COURT: Okay.

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1 MS. LEVI: I received that information, an
2 acknowledgment that there was Stingray or surreptitious
3 equipment used -- that Hailstorm equipment was used, in an
4 e-mail dated May 7th -- I think I've entered that into the
5 record at the last proceeding. Ms. Andrews [sic]
6 indicated in an e-mail as we were discussing last-minute
7 discovery issues and scheduling, "oh, yes, in fact this
8 was a Stingray case."

9 THE COURT: Okay.

10 MS. LEVI: And then we were sent to trial --
11 that was on, I think Friday, and we were scheduled for
12 trial that following Monday or Tuesday. Other than her
13 acknowledgment at that time, in the interim what I got, in
14 response to my formal request in November -- although, as
15 the Court's aware, there's no requirement in the rules
16 that I request the electronic surveillance information,
17 but we did anyway, in an abundance of caution -- I got a
18 pleading back from the State in January of 2015 saying,
19 the State had no information as to that. And when they
20 got it, they would give it to me.

21 THE COURT: Okay. What else?

22 MS. LEVI: Then the only other response I got
23 was that May 7th, and then that started the flurry of
24 these hearings, where we've been extracting the
25 information, as it's trickled in -- or, I think we're done

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1 extracting any information they'll give us on that.

2 THE COURT: Okay. What else then?

3 MS. LEVI: To the best of my recollection,
4 that's it.

5 THE COURT: Okay. All right. So, when do you
6 want to argue this? I mean, I don't --

7 MS. LEVI: I mean, I guess I can go ahead and do
8 it at this point, Your Honor. I mean, my sense is that
9 the Court's going to say, there's no prejudice because we
10 haven't --

11 THE COURT: Well, it isn't so much that. I
12 mean, tell me -- listen, I think I'm pretty confident in
13 finding that they, you know, this detective, I find he
14 intentionally withheld it. I mean, I don't think it's --
15 this guy, this detective's been on the force for 12 years,
16 an experienced detective. I don't know why he's putting
17 it in his desk. There's absolutely no reason to do that.
18 And I find that he intentionally withheld it.

19 Do you think -- but, you still got to tell me --
20 and I'm looking -- all right, for the record, I think the
21 most recent case, Correll v. State, 215 Md. -- or one of
22 the most recent -- 215 Md. App. 483.

23 And it references, Thomas v. State, which sort
24 of sets out, there's like a four-prong factors that I
25 should consider regarding sanctions for discovery: the

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1 reasons why the disclosure was not made; the existence and
2 amount of any prejudice to the opposing party; the
3 feasibility of curing any prejudice with a continuance;
4 and any other relevant circumstances.

5 So, it seems to me that I would go -- along with
6 the Lotus Notes, I don't have no [sic] idea why he
7 wouldn't have produced those. It makes no sense. An
8 experienced detective like that. And I think that -- so,
9 the question is now, you have them.

10 And so, what prejudice -- and then the -- as far
11 as the Stingray, it's there. It seems to me that if
12 you're going to proceed with a Motion to Suppress, you
13 clearly have the information that you need. So, if you
14 could just proffer to me what you think your prejudice is.

15 Now, I think -- I mean, I sort of get, and I
16 understand. And I'm sympathetic to your argument that,
17 you know, somewhere along the line this has to stop. I'm
18 just not quite sure that's really one of the necessary
19 factors in here that -- it doesn't really list deterrence.
20 But, you know, as a general proposition, you know, it
21 might be helpful.

22 And I get the outrage. And I think but for your
23 diligence, this stuff may not have been uncovered. I just
24 am at a loss, and you can -- that's what I really need for
25 you to address is, what prejudice there is to your client.

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1 MS. LEVI: Well, let me be clear, first, that I
2 think we have a speedy trial issue. Okay. So I think --

3 THE COURT: Okay. Well, that's another -- that
4 for me, is another issue. I'm not ruling on that.

5 MS. LEVI: Well, that's the prejudice is, is
6 it's violated his right to a speedy trial.

7 THE COURT: Okay. Okay.

8 MS. LEVI: As, Your Honor indicated --

9 THE COURT: So, now I have -- well, there is
10 already a -- didn't I grant the postponement? Or who
11 granted the postponement?

12 MS. O'HARA: Judge Phinn granted the
13 postponement.

14 THE COURT: Okay.

15 MS. LEVI: But we objected to the
16 postponement --

17 THE COURT: But it was ostensibly -- it was
18 because of the discovery issue, correct?

19 MS. O'HARA: No.

20 MS. LEVI: That and because one of the State's
21 witnesses suffered a seizure the day before trial. And
22 Judge Phinn said on the record, but for the seizure, I
23 would not have granted this request for a continuance.

24 THE COURT: Okay. But nonetheless, now we have
25 -- now it's been delayed. It will be delayed. It will be

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1 delayed until July 2nd or 3rd, whatever it is. Okay.

2 MS. LEVI: So, number one, I think that that's
3 the primary prejudice for us, is the speedy-trial
4 violation of his right to a speedy trial, and his
5 statutory state right to speedy trial under Hicks. His
6 constitutional and his state right.

7 Number two, I want to be clear with Your Honor
8 that we're not just asserting that this was a violation of
9 4-263. That this was a violation of the constitutional
10 discovery rules. And while 4-263 doesn't list deterrence
11 as a factor, certainly we would analogize to the fruit-of-
12 the-poisonous-tree doctrine under the Fourth Amendment,
13 search and seizure law.

14 And this is similar to -- this is a violation of
15 Brady. This is a violation of Kyles v. Whitely. This is
16 a violation of Arizona v. Youngblood. And the importance
17 of the discovery rules -- and Giglio -- memorialized the
18 constitutional obligation of the State. And they are to
19 protect and prevent hide and seek and trial by surprise.

20 And we don't have faith in the system. And the
21 State can't have faith in the system when the Defense
22 Attorney has to play hide and seek -- or they're playing
23 hide and seek, and we have to search for the evidence.

24 THE COURT: Well, let me ask you this.
25 Honestly, if you look at it, first off, as to Brady. I

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1 mean, I would say it's Brady. And the question is the
2 materiality. I mean, let's face it. You tell me, and you
3 have a much better perspective on this, if you're going to
4 have Mr. Holloway or Ms. Allen on the stand. You're going
5 to go, and they showed you a photo array, and you couldn't
6 pick anybody out? Yes.

7 MS. LEVI: The fear --

8 THE COURT: What is the -- what is the
9 materiality of that?

10 MS. LEVI: Well, that supposes that she wouldn't
11 -- that supposes what would happen at trial. I mean, the
12 fear is -- the harm is, we could have gone to trial
13 without a negative photo array --

14 THE COURT: Right.

15 MS. LEVI: -- she could of [sic] come on the
16 stand. And she said, I will tell you with 100 percent
17 accuracy, that's him. Because now she sees him sitting at
18 Defense table, right.

19 THE COURT: Right.

20 MS. LEVI: And so, that's the ultimate
21 suggestibility. And we have no way -- that's the ultimate
22 suggestibility that he's here, right. This is the one. I
23 mean, this -- so, we have --

24 THE COURT: Okay. But you have that
25 information.

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1 MS. LEVI: We have it now.

2 THE COURT: Right.

3 MS. LEVI: But the fact that the harm is so
4 great, because we could have had a situation -- but for
5 the diligence, right of the Defense team seeking the
6 information, and but for the honesty of the State's
7 witness -- we could have had somebody going for a life
8 without --

9 THE COURT: What's the difference? You would
10 have gone -- you'd go, well you've never, up until this
11 day, you've never identified this person, never. You've
12 spoken to the police officer. So, you're going to ask one
13 more -- and in fact, they showed you a photo array, and
14 you couldn't pick him out there.

15 MS. LEVI: I wouldn't have known that --

16 THE COURT: But the fact of the matter is, it's
17 absolutely clear that she has never identified, nor has
18 Mr. Holloway ever identified him before that date. If he
19 came into trial, and all of a sudden, oh, yeah, that's
20 him.

21 MS. LEVI: Your Honor, as Your Honor is fully
22 aware, eyewitness identification is the leading cause of
23 wrongful convictions.

24 THE COURT: But you have no eyewitness
25 identification.

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1 MS. LEVI: I have no identification now --

2 THE COURT: Right.

3 MS. LEVI: -- but I risk going to trial, where
4 she -- Your Honor supposes that there's one of two things
5 she could have said, right. And as a trial lawyer, I can
6 tell you, I can say with 100 percent certainty, I have no
7 idea what she could have said. She could have said, I can
8 tell you with 100 percent certainty --

9 THE COURT: No, no, no. I'm just saying -- I'm
10 assuming -- let's assume your scenario. She comes up and
11 goes, that's him. I'm 100 percent sure.

12 MS. LEVI: Um-hum.

13 THE COURT: And you, on cross-examination, are
14 going to say, up until this moment, you have never ever
15 identified him. As a matter of fact, you've never
16 identified anyone. And so you have one additional
17 question to go. And when they showed you a photo array to
18 the police, you couldn't pick him out then either. She's
19 got to say or he has to say yes --

20 MS. LEVI: And she could --

21 THE COURT: -- what is the great cumulative
22 effect of that?

23 MS. LEVI: -- and she could have said, I told
24 the police that it was him. I told the police exactly --
25 she could have lied, right. Because that's why we have

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1 impeachment that qualifies as Brady material. She could
2 come up with any number of responses to say, I already
3 identified him. I gave the police -- and they didn't
4 memorialize it. And then the jury's left to consider.

5 But it's compelling to the jury, because she's
6 the victim and she's injured, and she's sitting there.
7 She could have said any number of things. And I lack the
8 opportunity to impeach her with the photo array, but for
9 her honest disclosure.

10 THE COURT: But you have it now, so that's the
11 problem --

12 MS. LEVI: I have it now. And, Your Honor,
13 that's true. But the constitutional requirement is so
14 deeply connected to the fundamental right to a fair trial.
15 If we let this go with no sanction, violating his speedy
16 trial, under the Constitution, not just -- and I want to
17 direct Your Honor's attention, because, you know, sort of,
18 I guess like, I don't know -- somebody who loved --

19 THE COURT: So, you want to deter. You want me
20 to -- you want me to sanction them as a deterrent.

21 MS. LEVI: Under the Constitution, and under the
22 cases, Brady -- you know, Brady, Kyles v. Whitely,
23 arguably yes. Those cases come after a conviction is
24 reversed. And we are in the unique circumstance where the
25 State can say -- where the Court can say, look that was

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1 his trial date.

2 And but for the luck that we came upon the
3 information about the photo array one business day before
4 trial, we could have proceeded to trial last week. Or but
5 for the fact that she'd had a seizure, we would have gone
6 forward on this case without any of this evidence. Okay.

7 THE COURT: Right.

8 MS. LEVI: So, we're in the unique position to
9 prevent this kind of harm going forward, to sound out a
10 message from the shot tower, to say, this isn't okay.
11 This isn't acceptable. And there's got to be some
12 accountability. I mean, in other jurisdictions, officers
13 can be prosecuted at this point, as could --

14 THE COURT: Well, the State has the option of
15 doing that. I mean, I --

16 MS. LEVI: And the Court does, as well, to say
17 that under the Constitution, we think the violation so
18 severe and willful, that there's going to be an imposition
19 and a sanction in the criminal case, because it's --

20 THE COURT: Okay. What is the sanction that you
21 want?

22 MS. LEVI: Well, the ultimates sanction we want
23 is a dismissal --

24 THE COURT: All right. I think I asked you when
25 we started this hearing a long time ago that, do you have

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1 actually even a case, or -- do you have a Maryland case,
2 in which they -- wherever the inappropriate disclosure led
3 to a -- upheld a dismissal -- you know, there was a
4 dismissal and it was upheld?

5 MS. LEVI: I do not. But that doesn't mean that
6 it --

7 THE COURT: Okay. All right. So, what --

8 MS. LEVI: -- that doesn't mean that it's now
9 allowed for in the rules. And it doesn't mean that this
10 couldn't be the first time that we put the brakes on this
11 type of behavior prior to trial, right. So, we often find
12 out about this kind of thing later, after conviction. And
13 we are lucky to have found out about it ahead of time.

14 THE COURT: Right. But it's good and it's bad
15 -- right, but you did. So that unfortunately, that makes
16 it a much harder argument to claim prejudice here. So --

17 MS. LEVI: So, then the next piece of --

18 THE COURT: Okay.

19 MS. LEVI: -- the next sanction, if Your
20 Honor's --

21 THE COURT: Sure.

22 MS. LEVI: -- unwilling under the Constitution
23 and his fundamental right to a fair trial, his right to
24 due process. We think the due process violation -- in
25 this case, we've lost the ability to trust the integrity

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1 of this investigation, overall. And so, I think that
2 should be concerning for the Court, on whether or not he
3 could be entitled to due process in this investigation in
4 any way or in this case.

5 And that that would warrant also a dismissal, in
6 addition to the discovery rule. Your Honor's unwilling to
7 grant the Motion to Dismiss, I would ask that the
8 detective be prohibited from testifying in this case. I
9 would ask that --

10 THE COURT: Okay. You're talking about --

11 MS. LEVI: -- the jury be instructed that the
12 detective intentionally withheld evidence in this case. I
13 think it's fair to say to the jury, the detective
14 intentionally withheld exculpatory evidence in this case.

15 I think that -- Your Honor asked about
16 materiality, the fact that these officers executed this
17 search warrant based on the surreptitious electronic
18 surveillance that was required to be disclosed, and then
19 find the most compelling and inculpatory piece of evidence
20 in this case, in addition to one other photo array, is the
21 fact that he was allegedly located on or near the gun that
22 was used in the crime.

23 And that information came via the surreptitious
24 surveillance that we were required to be informed about.
25 We didn't find out about that until May 7th. Any

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1 information obtained as a result of that warrantless
2 intrusion into the home under Kyllo, K-y-l-l-o, the United
3 States Supreme Court case -- I think prevails or covers
4 this situation -- that evidence ought to be excluded.

5 The evidence of the phone and the evidence of
6 the gun ought to be excluded, because we were denied our
7 opportunity to timely file the Motion to Suppress. It's
8 an egregious --

9 THE COURT: Well, I'll let you file the Motion
10 to Suppress --

11 MS. LEVI: -- it's an --

12 THE COURT: -- I think that's --

13 MS. LEVI: -- it's an egregious violation. I
14 mean, Your Honor, if we don't impose a sanction, the
15 discovery rules say -- we're memorializing the
16 Constitutional obligation -- the discovery rules say, you
17 have a 30-day obligation from initial appearance for the
18 State to disclose this information.

19 There is nothing in there or in any case in the
20 state of Maryland that says these rules are optional. In
21 fact, the cases are to the contrary. And I put them in my
22 brief. This is mandatory. This is to prevent trial by
23 surprise. This is to promote due process. And there is
24 no exception to these rules.

25 And so what -- if there is a willful violation

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1 of the Constitution and the discovery rules -- what in the
2 rule allows the Court to excuse that and allow the
3 discovery to come in?

4 THE COURT: Yes. I'm just again looking at --
5 I'm at the first page of this, Court of Special Appeals,
6 2011. This was, there was a mistrial declared in the
7 middle of it for discovery violation.

8 "And declaration of mistrial however, is an
9 extraordinary act, which should only be granted
10 if necessary to serve the ends of justice.

11 The most accepted view of discovery
12 sanctions, is that in fashioning a sanction, the
13 Court should impose the least severe sanction
14 that is consistent with the purpose of the
15 discovery rules. We have said the purpose of
16 discovery rules is to give a defendant the
17 necessary time to prepare a full and adequate
18 defense.

19 And the Court of Appeals has warned that if
20 a defendant declines a limited remedy that would
21 serve the purpose of discovery rule, instead,
22 seeks the greater windfall of an excessive
23 sanction, the double-or-nothing gamble almost
24 always yields nothing."
25

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1 MS. LEVI: Your Honor, I think that the fact
2 that in the violations here were willful, takes us into a
3 whole separate category of constitutional law. And that's
4 what I would like the opportunity to brief. Because I
5 didn't have the willful violation of discovery in my
6 original brief.

7 And that's a separate analysis that I'd like the
8 opportunity to provide some supplemental briefing, even
9 this afternoon, or even before the day's end. I think it
10 takes us out of a benign or inadvertent discovery
11 violation. When it's willful, I think we're in a whole
12 nother [sic] ball of wax, can of worms.

13 THE COURT: Okay. All right. Well, if you can
14 come back at three, I will hear from you. All right.

15 MS. LEVI: If there's any other time that
16 Ms. O'Hara doesn't have to --

17 MS. O'HARA: It's fine --

18 THE COURT: Well, if you don't have to read -- I
19 mean, I can -- the problem is I have my collateral docket.
20 Are you going to be here some time tomorrow? I mean,
21 that's kind of a -- kind of a hectic day. But, you know,
22 I don't think there's -- Ms. O'Hara, I don't think there's
23 any great necessity to have to decide it this afternoon --

24 MS. O'HARA: No. That's fine.

25 THE COURT: -- but I need to decide it very

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1 soon, so we can sort of get this thing over with.

2 MS. O'HARA: We can do it this afternoon, Your
3 Honor. It's no problem at all.

4 THE COURT: All right. Okay. All right. Then
5 I will see you at 3:00 then --

6 MS. O'HARA: 3:00.

7 THE COURT: All right.

8 MS. O'HARA: Yes, Your Honor.

9 THE COURT: Thank you very much. We're
10 adjourned.

11 THE CLERK: All rise.

12 (Off the record / hearing continued - 12:12:12 p.m.)

13 AFTER BREAK

14 (On the record - 03:15:57 p.m., Defendant present.)a

15 THE CLERK: All rise. Part 12 resumes it
16 afternoon session. The Honorable Charles J. Peters
17 presiding.

18 THE COURT: All right. Good afternoon.
19 Everybody you could be seated. Do you want to re-call
20 that matter Miss --

21 MS. O'HARA: Yes, Your Honor. Calling the State
22 of Maryland versus Kerron Andrews, 114149007 through and
23 including 009. Assistant State's Attorney, Katie O'Hara,
24 for the State.

25 MS. LEVI: Good afternoon, Your Honor. Deborah

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1 Levi, on behalf of Mr. Andrews, who's present to my
2 immediate right.

3 THE COURT: Okay.

4 MS. LEVI: Your Honor, may he please be uncuffed
5 for purposes of the motion hearing.

6 THE COURT: No, I think at this point in time,
7 he's fine.

8 MS. LEVI: Okay.

9 THE COURT: Anyway, he can have a seat right
10 there, sir. You can have a seat right there.

11 MS. LEVI: Your Honor, may I approach the Clerk.
12 I accidentally --

13 THE COURT: Sure.

14 MS. LEVI: -- took an exhibit. May I begin,
15 Your Honor?

16 THE COURT: Yes. Go ahead, Ms. Levi.

17 DEFENSE'S MOTION TO DISMISS/MOTION TO SUPPRESS/REQUEST FOR
18 SANCTIONS/DUE PROCESS CONSTITUTIONAL VIOLATIONS (CONT'D)

19 MS. LEVI: The Court extended an opportunity for
20 me, having found the willful violation of the detective's
21 discovery -- the willful nature of the detective's
22 discovery violation -- allowed me some time to research
23 the case law in light of a willful violation.

24 And I did find several cases in which the Court
25 of Appeals has upheld dismissal as a sanction for a

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1 willful abuse of the discovery violations.

2 THE COURT: Okay.

3 MS. LEVI: So, if I may go through those cases
4 with Your Honor?

5 THE COURT: Go ahead.

6 MS. LEVI: The first that I'd like to cite, as
7 sort of a connector piece is that the civil case -- these
8 are civil. All of the civil cases cite the Taliaferro
9 standard. The Taliaferro standard is a criminal standard.
10 It is the same four factors that Your Honor cited to
11 previously.

12 THE COURT: Okay.

13 MS. LEVI: And the analysis --

14 THE COURT: Well, let's start off -- and you
15 don't have a criminal case in which there was a -- it was
16 dismissed, right?

17 MS. LEVI: Because there has not been one
18 reported where I found a willful nature of the discovery
19 violation in the criminal context. So, if I may walk Your
20 Honor through the cases that I have on the willful nature
21 of the discovery violation.

22 All of the cases on the willful nature of a
23 discovery violation that I find are in the civil context,
24 applying the same analysis that the cases rely on in the
25 criminal context. So, for example, in Lowery v. Smithburg

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1 [sic] Emergency Medical Services --

2 THE COURT: Well, let me ask you. Does the
3 State have a right to even appeal a dismissal? Does
4 anyone know? Would there be a report of opinion? I was
5 looking at -- there was a reversal of a mistrial that was
6 declared. You know, as I say, maybe I'm making -- this is
7 sort of an unfair burden here.

8 I don't know necessarily if there was a
9 dismissal by a judge whether or not the State would even
10 have a right to appeal it. But, I don't know, does anyone
11 have an opinion one way or the other?

12 MS. LEVI: My understanding is that the State
13 can appeal a constitutional issue. But, you know what,
14 let me think about that for a second. There's --

15 THE COURT: Well, anyway, all right. Go ahead.

16 MS. LEVI: -- very narrow --

17 THE COURT: Go ahead. That's fine.

18 MS. LEVI: -- there's very narrow grounds.
19 Okay. So, in Lowery v. Smithburg [sic] Emergency Medical
20 Services, this is 173 Md. App. 662 (2007). And in this
21 particular case is one of the civil cases that cites the
22 Taliaferro to show the Court that it's the same standard
23 on page -- I'm just going to use my numbered pages --
24 Page 8, and I'm happy to present all of these to the
25 Court.

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1 And in this case -- and if I -- I was moving
2 very quickly, so if I could just take my time and try to
3 go methodically, I'll be as fast as I can, without trying
4 to leave anything out, Your Honor. I thought this case
5 was interesting, because here, the Court upholds a
6 sanction for a discovery abuse, "viewing the degree of
7 prejudice as a neutral factor."

8 So, even where there's no prejudice, the Court
9 can still impose a grave sanction for a discovery abuse,
10 even if prejudice is neutral. And the case says that:

11 "The trial court has broad discretion in
12 fashioning a remedy for a violation of the
13 discovery rules, absent a clear abuse of a
14 discretion they won't abuse it."

15 And then I like that the Court says:

16 "If the scheduling orders are to be
17 permitted to be treated in such a casual
18 fashion, why bother with them?"

19 So, that case is not the most compelling, but I
20 wanted to show the link between Taliaferro that I see in
21 all these civil cases, as well. If I could not direct the
22 Court's attention to Scully v. Tauber, 138 Md. App. 423
23 (2001), Court of Special Appeals of Maryland (2001).

24 On Page 5 of the Westlaw version:

25 "There are cases, as appellee points out,

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1 where the ultimate sanction of dismissal of the
2 plaintiff's case or the grant of a default
3 judgment against a defendant have been upheld
4 even though the offending party has not acted
5 contumaciously."

6 And then they cite Berkson v. Berryman, 63 Md.
7 App. 134:

8 "[N]o abuse of discretion in imposing the
9 ultimate sanction for a party's violation of a
10 discovery order even though the offending
11 party's actions were neither wilful nor
12 contumacious."

13 In Rubin v. Gray, 35 Md. App. 399:

14 "[The] gravest sanctions 'may be imposed
15 for a deliberate attempt to hinder or prevent
16 effective presentation of defenses or
17 counterclaims, or for stalling in revealing
18 one's own weak claim or defense'[s].

19 In all the cases that we have found where
20 the offending party had acted non-contumaciously
21 and where the trial court either dismissed the
22 plaintiff's case as a sanction or entered a
23 default [judgment] against a non-complying
24 defendant, the offending party had no valid
25 excuse for failing to comply with discovery

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1 orders and/or for failing to comply timely with
2 discovery requests by the opposing party.

3 ...

4 The appellate courts of Maryland have
5 overturned the imposition of the ultimate
6 sanction of dismissal against a plaintiff or a
7 delay [sic]...when there was no record of
8 inordinate delay or contumacious conduct on the
9 part of the party against whom sanctions were
10 sought."

11 So, where there is contumacious or willful
12 behavior, it is appropriate. Dismissal is appropriate.
13 In Klupt v. Krongard, on Page 12 of the printed out
14 opinion, "our courts have previously" -- I'm sorry, this
15 is 126 Md. App. 179 (1999):

16 "Our courts have previously upheld, as
17 within the court's discretion, dismissal of the
18 offending party's claims as the sanction for
19 discovery abuse."

20 Again citing Rubin v. Gray, or entry of a
21 default judgment. And Peck v. Toronto, 246 Md. 268, 270.
22 And in this particular case:

23 "[W]here the court found [that] the
24 appellants had clearly destroyed discoverable
25 evidence and had done so willfully and

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1 contumaciously, we find no abuse of discretion
2 in the court's dismissal of the appellants'
3 claims."

4 And then, I think I haven't read Klupt v.
5 Krongard. And in that decision, which is 126 Md. App.
6 179, again (1999), this is the Civil Rule 2-433, but again
7 under the same Taliaferro factors:

8 "[T]he court may impose the sanction of
9 dismissal for the failure to comply with an
10 order compelling discovery, [or we would say be
11 extension, any discovery rule at all].

12 ...

13 [The] "courts 'have the power to sanction
14 the destruction of evidence, whether that
15 authority is derived from the discovery
16 sanctions or from their inherent powers.'"

17 In that case, they couldn't comply because the
18 party had actually destroyed the evidence that the other
19 side was seeking. And they found that to be willful. Let
20 me just make sure that I haven't missed any that I wanted
21 to cite. Court's indulgence, briefly?

22 THE COURT: (No audible response.)

23 MS. LEVI: Okay. Yes. Maryland law -- and this
24 is from Klupt v. Krongard, again, 126 Md. App. 179 (1999):

25 "As noted above, the penalties for abusive

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1 conduct during discovery, including dismissal
2 with prejudice, can be harsh. But it is the
3 court alone, not the trier of fact, who is the
4 master of the discovery phase. 'Maryland law is
5 well settled that a trial court has broad
6 discretion to fashion a remedy based on a
7 party's failure to abide by the rules of
8 discovery.' "

9 "None of the cases cited by the appellants
10 address the question...." 'Appellant has not
11 cited, nor have we found, any Maryland case
12 holding that a trial court's exclusion of
13 evidence based on a discovery violation, of the
14 nature of that in the case at bar, constituted
15 an abuse of discretion.' "

16 In that case, is where they spoiled it. Here,
17 we would analogize where they willfully withhold it.

18 "Likewise...the appellants have not cited a
19 single Maryland case holding that a trial
20 court's dismissal of claims based on a discovery
21 violation, like the one in the case sub judice,
22 constituted an improper judgment."

23 So, where in a criminal case where liberty is at
24 stake, far more important than money in a civil case,
25 right. It is liberty as the ultimate thing that we

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1 protect in our Constitution. And the Detective in this
2 case, far as we know, has willfully withheld certain
3 exculpatory information. We have lost faith in the
4 integrity and the process.

5 Let me add to that, the fact that we outwardly
6 affirmatively requested information from the State's
7 Attorney. And the detectives testified that there was no
8 request communication related to that request conveyed
9 until nearly six months after we made the request.

10 We requested it in November. That information
11 that was exculpatory and required under the rules was not
12 communicated to the detectives based on their testimony.
13 And the State presented no other conflicting evidence
14 until May of 2015. That's six months after we requested
15 it, and two weeks prior to trial.

16 There is an abuse of the process from the
17 detectives that is imputed to the State's Attorney under
18 *Kyles v. Whitely*, because they have an affirmative duty to
19 seek evidence, even if the police are hiding it from them.
20 That is the burden that the Supreme Court has placed on
21 the detective.

22 We affirmatively sought evidence, which the
23 State responded to us that they did not have. And by the
24 evidence that was presented, they never even asked for it.
25 Your Honor, we think this is an abuse of the highest form.

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1 It is a gross abuse of the discovery process. We have
2 lost all faith in the integrity of this criminal
3 prosecution.

4 And dismissal is the only appropriate remedy.
5 And it is clearly within the broad discretion of this
6 Court. And I think without question, would be upheld as
7 the only appropriate sanction.

8 THE COURT: Okay. All right. Ms. O'Hara, do
9 you want to respond?

10 MS. O'HARA: Your Honor, thank you.

11 STATE'S OPPOSITION TO MOTION TO DISMISS/SUPPRESS/REQUEST
12 FOR SANCTIONS/DUE PROCESS CONSTITUTIONAL VIOLATIONS

13 MS. O'HARA: Your Honor, I think that we simply
14 can't impugn the civil cases and the criminal cases to be
15 the same standard. If that were the case, we would have
16 an entirely different standard for innocence, standard for
17 guilt. We'd have an entirely different lay of the land.

18 And I think to inject the civil standards of
19 discovery in a criminal case is at the outset a mistake.
20 The case law on point on criminal cases is very clear.
21 That the point of the discovery rules is to level the
22 playing field. The point of the discovery rules is not to
23 guarantee a windfall.

24 And leveling the playing field, so that a jury
25 or court considers the case fairly. So that the State

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1 doesn't have a leg up, that the State doesn't have perhaps
2 exculpatory evidence. Perhaps something that could be
3 determined to be Brady evidence. Or that the Defense
4 doesn't have a leg up of dismissal. Or dismissal of the
5 entire case, or dismissal of some of the evidence such
6 that, the finder of fact is left with an inaccurate
7 version of the evidence.

8 And I think that that's what the Defense is
9 seeking, some kind of inaccurate version of the evidence.
10 What we have here is an incredible breath of fodder for
11 cross-examination of the Detective. Incredible arguments
12 for how poorly he conducted his job.

13 But I don't believe that the -- and while I'm
14 sympathetic to what Ms. Levi's saying, I don't believe
15 that the case law on point either endorses or even permits
16 what she's asking the Court to do. I think that it's
17 instructing the Court that the appropriate remedy is a
18 continuance, is that the Defense should be able to use the
19 evidence, as it should of [sic] all along.

20 That the whole point of the defense, from the
21 very beginning of any case, is to defend the client and
22 show in some respect that the investigation was faulty, or
23 poorly done. And now the Defense has way more than most
24 cases have to show that.

25 So, I just -- I don't believe that the law, as

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1 it pertains to the criminal system, as it pertains
2 directly to this case, calls for a dismissal, permits a
3 dismissal. I think that it permits, calls for a
4 continuance of the case, which has already occurred. Not
5 because of the discovery violation.

6 And Judge Phinn was very clear that she was not
7 postponing the case because of the discovery violation,
8 but because of the witness issue. And where we are is, we
9 are in a level playing field. The discovery --

10 THE COURT: Well, let me ask you, what is -- all
11 right. So, Detective Converse, I mean, what is he
12 supposed to testify to? It seems to me, his credibility
13 been's significantly impacted by --

14 MS. O'HARA: Agreed.

15 THE COURT: -- this whole process --

16 MS. O'HARA: Agreed.

17 THE COURT: -- so, what is he supposed to be
18 testifying to?

19 MS. O'HARA: He would -- I mean, he's the
20 primary investigator, so he will -- he would be testifying
21 to the point of the investigation that he entered into,
22 which was just before May 5th, I believe May 3rd is when
23 his involvement takes place. Because he was not present
24 the night of the shooting.

25 He became involved after the night of the

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1 shooting. So, when the individuals were still in the
2 hospital, is when he first became involved in the
3 shooting. But he was not on the crime scene. So,
4 basically, everything from the hospital through and
5 including the photo array with Rihanna.

6 He would be otherwise testifying to the photo
7 arrays, to the Defendant's statement. And I agree, I
8 think that his -- I think that his testimony --

9 THE COURT: I'm sorry, his statement? What, the
10 Defendant gave a statement?

11 MS. O'HARA: Yes.

12 THE COURT: Was it inculpatory, exculpatory?

13 MS. O'HARA: The Defendant gave a statement
14 admitting to being there. Indicated that he was not
15 shooter. That someone else was the shooter who looks
16 exactly like him, but that he ran away. And did not give
17 an explanation for having the gun and the phone used to
18 set up the deal.

19 THE COURT: Okay. Anything else -- I'm sorry to
20 interrupt you, I think.

21 MS. O'HARA: No, not at all, Your Honor. Your
22 Honor, the State's position is simply that that
23 understandably, the Court will issue a sanction. I get
24 that.

25 The sanction however of dismissing the case or

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1 striking the evidence to make then an inaccurate version
2 of the evidence, when an appropriate remedy is on the
3 table and has already played out to make the parties on --
4 remain on a level playing field.

5 We are on a level playing field. I now have
6 everything. Ms. Levi has everything. And we have a trial
7 date of July the 2nd.

8 THE COURT: Okay.

9 MS. O'HARA: I think that the point of the case
10 law, the point of the discovery rule is not for a
11 windfall. And that can't be more obviously stated than it
12 is in a criminal case, in Thomas v. State, which the Court
13 cited to. Which I believe should be driving this Court's
14 consideration, not civil cases.

15 RULING ON ARGUMENTS OF COUNSEL ON MOTION TO DISMISS/
16 SUPPRESS/SANCTIONS/DUE PROCESS CONSTITUTIONAL VIOLATIONS

17 THE COURT: Okay. All right. Thank you,
18 Counsel. It seems to me again, getting back to the four
19 factors. The reasons why the disclosure was not made is,
20 as I said, clear -- I mean, I don't know if I should
21 credit Detective Converse, or I don't know how I view him
22 -- but clearly admitted he didn't hand it over. He didn't
23 have an explanation.

24 And this is not a novice. He's not a novice on
25 the police force. He's not a novice in investigations.

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1 This is certainly Investigations 101. I mean, I don't
2 think this is sophisticated or complicated at all. And
3 then the odd thing of not putting it in the file, and then
4 somehow still holding onto it, and putting it in his desk,
5 I find that utterly bizarre. But as I said, I will find,
6 I think he intentionally withheld it.

7 So, this is -- I mean, I don't -- looking at the
8 cases, they do reflect on the fact -- or I'm sorry they
9 address the fact whether the bad faith on the part of the
10 State -- and I'm talking about specifically the detective
11 here, most of these cases, or in all of them, I could find
12 most of them were some sort of inadvertent negligence. I
13 mean, this clearly was, it seems to me a willful
14 withholding.

15 Now, I have to look at the feasibility of curing
16 any prejudice with a continuance -- I'm sorry, strike
17 that. The existence and the amount of any prejudice to
18 the opposing party. I mean, the fact that there are now
19 -- all right. So, there are two -- we now have two
20 negative photo arrays, which are here. So, the Defense
21 has them.

22 So, I don't know what prejudice there would have
23 been. Now, again, I think after the fact, if we had been
24 doing -- concerning potentially some Brady violation --
25 after there had been a conviction, you know, we look back

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1 on it, and I think maybe this evidence could have been
2 construed as Brady evidence. And also I'll allude to the
3 Lotus Notes about the money that was found.

4 Again, I don't even know how the State
5 necessarily is going to argue that, or if you're going to
6 be able to argue it. Whether they would get up and argue,
7 well he's a drug dealer, look at the money he had, whether
8 or not that'd even be admissible. But nonetheless, we do
9 have this report, so the State has that -- I mean, I'm
10 sorry, the Defense has it.

11 So, I'm not quite sure what the prejudice -- the
12 feasibility of curing any prejudice with a continuance --
13 well, there already is a continuance. It seems to me,
14 none of this is something that Counsel couldn't deal with
15 and apply at the trial, now that Counsel knows about any
16 other relevant circumstances.

17 I mean, I'm just kind of left with, I mean, yes,
18 I guess that Counsel could cross-examine Detective
19 Converse about this, and bring out in front of this jury
20 that he withheld evidence. Which I see is the extremely
21 serious issue. But the Court has found that.

22 And it seems to me, I would be remiss just to
23 allow this to go on, and let the jury sort of arrive at
24 its own conclusions after I found a conclusion that he's
25 been -- I don't know if he was deceptive on the stand. I

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1 mean, although I find it kind of disingenuous for him not
2 to have any reason why he didn't hand it over. That seems
3 rather odd.

4 But I don't know, these cases don't seem -- for
5 the record, maybe I'm wrong, but I think that in fact some
6 sanction ought to be imposed for a bad-faith action by
7 him, so I am going to exclude his testimony. I don't find
8 him credible, based on the fact that of what he did
9 earlier, in withholding evidence, without any real
10 plausible explanation as to it.

11 And it's not once, and not twice, and really
12 three times. But I think the two negative photo arrays
13 kind of take your breath away. So, Madame Clerk, I'm
14 going to grant -- partially grant the Defense motion for
15 Sanctions. And I'm going to exclude the testimony of
16 Detective Converse.

17 THE CLERK: Okay.

18 THE COURT: Unfortunately, the State will just
19 have to deal with that at trial. Now, obviously, I'm not
20 going to exclude -- I'm not going to prevent him -- if the
21 Defense wants to call him, I will certainly allow you to
22 do that. But, I don't believe that the State should be
23 permitted to use his testimony to establish this
24 gentleman's guilt. Because of all that (inaudible) so.

25 Maybe a (inaudible) victory for the Defense, I

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1 don't know. But I think something had to be imposed,
2 based on the level of withholding here, so. All right.
3 Anything else, Counsel?

4 MS. O'HARA: No, Your Honor.

5 MS. LEVI: And as to exclusion of the gun or the
6 telephone?

7 THE COURT: I'll deny those.

8 MS. LEVI: Thank you, Your Honor.

9 THE COURT: I just don't see, you know, anything
10 else. Okay. Thank you.

11 MS. LEVI: Thank you, Your Honor.

12 THE COURT: So, you have that, Madame Clerk?

13 THE CLERK: Yes.

14 THE COURT: Okay.

15 MS. LEVI: Your Honor, may I please be excused?

16 THE COURT: You may.

17 MS. LEVI: Thank you.

18 MS. O'HARA: Your Honor, have a nice afternoon.

19 THE COURT: You, too.

20 (Off the record / end of hearing - 03:37:40 p.m.)
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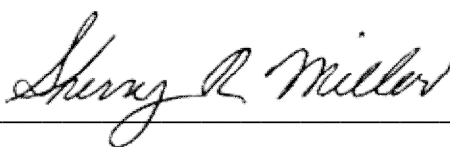
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TRANSCRIBER'S CERTIFICATE

This is to certify that the proceedings in the matter of the State of Maryland v. Kerron Andrews, Case Nos. 114149007-009, heard in the Circuit Court for Baltimore City, on June 4, 2015, was recorded on digital media with video.

I hereby certify that the proceedings herein contained were transcribed by me or under my direction. That said transcript is a true and accurate record to the best of my ability and constitutes the official transcript thereof.

In witness thereof, I have hereunto subscribed my name on June 24, 2015.



Sherry R. Miller, President



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