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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, Plaintiff, v. GERMAYNE CUNNINGHAM, Defendant.	Case Number: CR2017-006221-001 **DEFENDANT'S MOTION TO DISMISS FOR PROSECUTORIAL MISCONDUCT, DUE PROCESS VIOLATION(S), BRADY VIOLATION(S), AND RULE 15 DISCLOSURE VIOLATION(S)** (Before the Honorable Patricia Starr) *Evidentiary Hearing Requested*[1]

Defendant Germayne Cunningham, by and through undersigned counsel, hereby moves this Honorable Court to dismiss this case for due process, *Brady*, and disclosure violation(s). This Motion is supported by the following Memorandum of Points and Authorities, Defendant's right(s) to due

[1] This is a contingent request. If the State, by and large, concedes the Factual and Procedural Background of this pleading, then an evidentiary hearing may not be necessary. If, on the other hand, the State objects to material facts as outlined below, then evidence will be necessary. If evidence is needed then the Defense would call, at a minimum: Det. Yeo, Andrea Gamez, Jennifer Calovini, Lori Ohrt, Casie Phillips, Greg Garner, Mark Moncado, Goodyear Police Chief Issitt, and a representative from Tyler Technologies.

process, fair trial, effective assistance of counsel, and effective cross-examination. This Motion is also brought pursuant to *Arizona Rules of Criminal Procedure*, Rule 15.

What follows can only be described as (to use the words of case agent and lead detective Noah Yeo during his Internal Investigation interview), "a major problem."

I. Factual and Procedural Background

A. May and June 2025 Interview(s) of Det. Yeo.

In the years preceding trial in this case, the Defense noticed concerning discrepancies in chain of custody. A multi-day pretrial interview of the case agent, Det. Yeo, began in May 2025. Both the State and the Defense were present. On day two of the interview (May 27, 2025), Det. Yeo was asked about a discrepancy in the chain of custody. Defense could not make sense of a chain of custody log which provided contradicting dates and times for cell phones in this case. The cell phones in question, items 103 and 104, were cell phones belonging to Mr. Cunningham and Mrs. Cunningham. Defense wanted to know why the log showed the phones had been signed out on two occasions when they had not yet been returned:

Q4: Okay. So, the–per the chain of custody, it says that you took them out on 3-9 and then returned them on 3-13. Um, but McCure says that on 3-10, he put 'em in the locker. So...

A: Hmm

Q4: …how did you get the phones back if you can't get into the locker?

Defense counsel went on to say:

Q4: So, am I reading that chain of custody wrong? Did you re-impound them on

A: 3-13? I see–I see what you're talking about. Um, I apologize it's a little confusing on what I'm looking at here.

After clarification of what document Defense was referring to, the exchange continued:

A. Okay. l–I see what–l see what you're talking about here. I–I wonder...

Q3: Okay.

A: ...I wonder if that fell maybe on a weekend and, uh, Raisor—custodian Raisor didn't put it in until that time. I'd have to–I–I'm sorry. I have to look into it. I...

Q4: Okay. Have you...

A: That's a good question. I–I don't know..

Q4. Because on Detective McCure's supplement he says on 3-10 at 1739 hours, he re-impounded items 103 and 104 in that locker that we just talked about

A: Okay

Q4. But yet the chain of custody says you did it. So, uh, on 3-13, so that's what I'm trying to figure out.

A: Right. So, McCure said he impounded on, um, the 10–3-10.

Q4: Mm-hm. So, I guess I'm trying to figure out, like, how you would have had 'em on the 13th.

A: Right.

Det. Yeo could not explain the discrepancy and advised he would "look into it."

Day three of the pretrial interview occurred on June 5, 2025. Counsel once again broached the subject of the contradicting chain of custody log (as the information was not volunteered by the detective). Det. Yeo said he spoke to Goodyear Property and Evidence Supervisor Ms. Andrea Gamez. His less than clear explanation was as follows:

> Oh, okay. I – I thought you had another question about that. So, I can – I can give you the answer to that. Um, so, um, I – I did my research on our – in our system and I also spoke with the property supervisor – supervisor Andrea Gamez. Um, she

> was that, uh, woman that you guys met when you came for the viewing of the evidence.
>
> Um, and I showed her in the system where it showed that it was signed out on March 9 and where Detective McCure did a chain of custody form where he says it was returned on the 10 and it was approximately 17—fi—40 hours or something like that. Um, and, um, where in the system it shows – I believe it shows, uh, checked out or received by me on the 13, um, in the early morning hours. Um, I looked up the dates for that time period and that was a Friday evening where Detective McCure dropped off the phones into property which would mean that – our – our property evidence folks, they don't work the weekends. So, they would have come in, scanned the, um, code on the envelope containing the phone which would've been on the 13. I asked, uh, Supervisor Gamez why it would show my name, and she said that it's possible that, uh, prior, um, property Custodian Raisor saw that it had my name on the package and entered it as mine. Um…

That answer stood until January 14, 2026, until the actual truth (or parts of it) began to surface.

C. Events of June 13, 2026, and the Following Internal Affairs Investigation.

On January 13, 2026, during trial, Defense cross examined Scott Koehle about his cell phone extraction. During that questioning, Det. Yeo became concerned with a piece of tape on the envelope used to hold the phone. Det. Yeo noticed the tape did not match the other tape on the envelope.[2] He also noticed that tape was not properly initialed on accordance with policy. Det. Yeo claimed he began reviewing the digital evidence log in the Goodyear system for the first time. He discovered numerous inconsistencies spanning several pieces of evidence with regard to their status, movement, and location within Goodyear Property and Evidence. Panicked, Det. Yeo met once again with Property and Evidence Supervisor Andrea Gamez[3] first thing the next morning. This time, Det. Yeo claimed Ms. Gamez's answers were markedly different than the ones she gave in May 2025. Det. Yeo told Internal Affairs the following:

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[2] The "candy cane" tape in and of itself should not have alerted Det. Yeo to anything; other pieces of evidence also feature this tape.

[3] It is worth noting that Ms. Gamez was, by and large, responsible for all evidence in Mr. Cunningham's case.

> On January 14, 2026, Detective Yeo met with Gamez and told her about what he had discovered. When Gamez was asked why all these items were showing so many strange times of being checked out as well as the actual times they were checked out, Gamez stated this has been an ongoing issue for several years and the "wacky" times have been in the system for years. She continued by telling Yeo that she thought it was a software issue and that IT had been involved a couple of times where they tried to duplicate the problem, but they couldn't. Gamez also stated several people knew about this issue including Mark Moncada who conducts the non-audits of property and evidence and Greg Garner (former Lieutenant over property, has since retired). Gamez said she did not know why those times were there and they are incorrect. Gamez told Yeo the problem was fixed when the department went from LERMS to RMS. When Yeo showed Gamez the times for the property that was checked out in May of 2025, she had no idea as to how it could have happened. That is when Yeo asked Gamez if the property technicians have access and the ability to change the times and dates within the chain of custody. Gamez told Yeo they have administrative rights and can and have changed times on the chain of custody in the system. Gamez continued by saying there have been times when they have changed times to match the officers report. Yeo advised Gamez she might want to notify her supervisor and that this was going to cause a major issue.

In sum, the digital evidence log system for Goodyear Property and Evidence had been creating fraudulent entries for several years. The Property and Evidence Supervisor was aware of it. An internal affairs officer was aware of it. A supervising lieutenant was aware of it. The IT department was aware of it. And, to make matters worse, property technicians were granted access and ability to manually manipulate the digital evidence system to match police reports (which they did). Ms. Gamez was immediately put on leave. She is being investigated for a myriad of violations, not least of all "mishandling, misplacement, or reckless loss of documents or property" and mishandling evidence. That investigation is ongoing.

1. Notable Statements from Det. Yeo in his IA Interview.

The Internal Affairs report, attached hereto in full as **Exhibit 1**, purports to summarize Det. Yeo's statements from his January 23, 2026, interview.[4] Det. Yeo's supplemental report

[4] The timing of the interview is suspect. Det. Yeo allegedly became aware of this issue on January 13, 2026. He was not interviewed by Internal Investigations until January 23, 2026. In the interim, Det. Yeo

(authored immediately after his January 14, 2026, meeting with prosecutors Josh Clark and Jessie Wade), is also attached as **Exhibit 2**. Several important facts and statements, relevant to this Court's determination, were omitted. Many of Det. Yeo's quotes reveal the true gravity of Goodyear Police Department's misconduct. Some of those are as follows:

a. In reference to the May/June 2025 pretrial defense interviews and Defense's questions about chain of custody issues, Det. Yeo says, "I [told] the Defense everything seems to be fine. I kinda chalked it up to, okay, well I think we have this figured out. And I didn't really deep dive into the evidence."

b. In reference to the cell phone extractions, "There is chain of custody to support every time and these dates and times, but that's where it gets weird. Um some of it can be accounted for through them being dropped off in an afternoon and the following day they check them in…"

c. With regard to the envelope with candy cane tape and no initials presented at trial, "At the very top, there is an uninitialed or unsigned seal at the top of the envelope. They don't ask about that. But I noticed. And I'm like, why is that there? And why isn't it initialed? And why…you know my brain is going what the heck is that about?" He goes on to say, "Now I'm going, what the heck?"

spoke with his supervisors, prosecutors, property and evidence staff, Jennifer Calovini, and the very investigators conducting the IA interview.

d. "And so again, as I'm sitting in trial I'm going, hmmm, when did that [tape] get there and why isn't it initialed?"

e. "This for me is more of a preemptive strike on what's coming, I think. The Defense, I think they know damn-well that this is here and they're waiting for me to get on the stand and talk about this."

f. When asked whether the prosecutors knew about this, "They did, cuz I, I wanna say…"[5]

h. "There is no chain of custody on when [the phone] may have been signed out or when somebody put [the tape] on there."

i. "As I'm going through this stuff I see there's a property room history here okay…so I'm looking at this right…and look at this, I'm seeing 0543, 0124 in the morning, checked out. 0420. 0339. And I'm going what are these crazy morning hours? There's even some that are all zeroes, at least some of the evidence, all zeroes."

j. With regard to day(s) long delay(s) in entering property back into evidence after being dropped off at a locker, "It's a major problem. Because Defense is gonna say 'Where was it?'"

k. "What's not explainable are these erroneous early morning hours and then movement of evidence."

l. "Here we go. When I saw this, I'm going, oh no, right? Because you have all these crazy times up here. Then on the chain of

[5] Det. Yeo conspicuously fails to finish this statement or revisit the issue during his interview.

custody, she essentially is showing two sign out times in one day to me."

m. "So now I see this. And I start tapping through different evidence. I go to item 103A, which is a thumb drive, 103A and 104A, which are thumb drives from John's original extraction. And I'm like, you know, let me just look at this chain of custody. And again, I see all these crazy times on the property room backside."

n. "Here's a whole other thing that I asked Andrea about. There's a whole different status tab, that she really had no clue what this was. And so, down here, in a tab below here, it said that those thumb drives, 103A and 104A, were destructed, destroyed, no longer in evidence. And I said 'Oh my God.'"

o. "Now I'm going complete panic mode. I'm going oh my gosh. So the next morning I go to Andrea with this laptop and I said 'Andrea we have a serious problem.'"

p. "Clearly the Defense is trying to say that from the beginning that we've been altering evidence in this case, and now I'm really concerned."

q. When confronted about the inconsistent chain of custody logs, Det. Yeo said Andrea responded, "'Man, we've had this problem for years, Noah. These times have been in the system, these wacky times have been in the system for years. We've been trying to figure this out. I believe it was from, um, it is a software issue. I believe

IT has been involved a couple of times. Trying to duplicate the problem and they can't duplicate it.' She said Mark knew about it. She's like, 'I've brought this up.' She said Greg knew about it, Greg Garner. I don't know why those times are there."

r. Det. Yeo advised Andrea said "it was fixed" when the Goodyear PD changed their software from New World Systems to RMS. Det. Yeo then showed her inconsistences ***after*** the new system was in place. Andrea then said, "'It could be that we're having those issues still.'"

s. "I said are you guys able to change the times on the chain of custody? And she says, 'Yeah. We have administrative rights. We can and we have changed times on the chain of custody in the system.' Now my wheels are going oh my God. Why are you guys changing times?"

t. "[Andrea] says, 'Well there's been times we have changed times to match the officer's report. So what the officer had put in their report.' And so I'm going that's a problem."

u. "My thought process is no, these times should be concrete. The officer should document why his time is different. I didn't tell her that, but that's what I'm thinking in my head. My mind is now going crazy, at this point, I'm going, oh my God."

v. "Before I left property and evidence, I said, Andrea I have to tell my supervisor about this. This may be a massive shitstorm, just fyi."

w. "I go to Court. I'm trying to get ahold of my prosecutors that morning. But it was so busy, but again I told you they don't communicate much with me. Just so happens I'm in the elevator with them to go downstairs for lunch, and I whispered in prosecutor Joshua Clark's ear I think we may have a serious problem with our chain of custody in this case with some of our items. He says Noah, let's talk about it after trial."

x. "This is the others strange part of this whole thing. During this trial, Ms. Hamilton mentions… something about Lisa's phone being accessed in June 2017." He goes on to say how the Defense inferred Lisa's phone was tethered after it was in police custody.

y. To the IA investigators, "You're trying to save the case. And that's what I'm trying to do too."

z. "Obviously I am preemptive striking this, because obviously I don't know why that tape's there."

aa. In response to the IA investigators commenting how Property and Evidence employees can add events to evidence logs and the inaccurate times, "It just looks terrible."

bb. "I do know I asked [Andrea] who is your boss. And she told me Jennifer Calovini. I am almost certain I told [Andrea] you might want to let her know."

cc. In response to whether Det. Yeo Spoke to anyone else from Property and Evidence about this issue, "[Carl] just told me because

he overheard it or something 'Yeah, we can change the times on the back end.'"

dd. "I'm talking to Andrea on the phone about the repackaging and stuff. I said hey I have one more for you Andrea I said, can you change the times and the dates on the back end? She says, 'Yes.' I was like, oh man. So they can not only change the time, they can put a completely different date in there."

ee. "I can tell you the only reason, actually, I brought this up, so, I can tell you, I had a strong feeling that the Defense was on to this, based upon that defense interview. And then based upon what's been talked about in a roundabout way in trial with other witnesses. I'm smart enough to know. They knew something was wrong."

ff. "I guess the biggest takeaways for me were Andrea said that this had been going on for years with these erroneous times, and I'm going oh my God."

2. Notable Statements from Jennifer Calovini in her IA Interview.

The following statements from Ms. Calovini derive from here IA interview. They are partially summarized in the IA report, but the actual quotes reveal the seriousness of the situation. They also prove Ms. Calovini had actual knowledge of these issues before January 2026:

a. When asked when she first found out about these issues that came up with property and evidence, she says "the night of the fourteenth." This referred to January 14, 2026.

b. "The question came up, why is P&E allowed to change or enter dates and times. Like why are we not using the scanner, why are we not? And after speaking with other people down there, that's just not their practice."

c. "I have been told by Andrea and we've been working with IT that when we did the transition from LERMS to RMS, February 13 of 2024, this has happened and they've been trying to find where this evidence is inappropriately marked since then. They were short handed and could not complete a full inventory. Now that we have almost completed the inventory, we believe that we have all of those corrected." She goes on to say, "It's a system error."

d. In reference to the envelope holding the cell phone, "There's tape that's on there, that's on the envelope, that has no initials, dates, serial numbers, nothing, shield numbers. Nothing. And there's nothing in the case notes anywhere that says what was done, why is that tape there." In response to who would have taped it, "That is an up in the air, we don't know."

e. "If it is practice that they maintain the evidence that's in their custody, which includes repackaging or doing whatever, then not initial and dating it should be in their procedure. But right now, I can't find anything that talks about them doing anything with the evidence. So I would assume that they are following the property

and evidence stands, or procedure, which requires a date and initial at a minimum."

f. "The next time the phone was released was the 29th of 2025…It says it was released to Noah on May 29th of 2025. But there's no return. That he returned it. Which is weird."

g. In response to whether she was aware of any other problems or issues with Property and Evidence, Calovini first says, "Nothing that I have heard of in the last five years and nothing since I've been there."

h. "The last formal audit was 2017. Standard is every 2, every 3 years. Definitely when you have turnover. So when like Lori Ohrt left, there should have been an audit to make sure everything was done. Annual inventories are usually done annually.[6] The last one had been done in 2022. I was told that was staffing."

i. "Well what [property and evidence employees] do is have them look at the officer's packaging manual, and, because that's how it needs to be packaged. So the new people are taught, yeah, to look against that manual and if it doesn't meet that requirement then it either gets rejected or whatever. Because technically, they're not supposed to repackage something that an officer brings in and its packaged incorrectly, they're supposed to refuse it back to that

[6] Of course, annual inventories that are not conducted annually are, by definition, not annual.

officer. They're only responsible if it's in their custody and its got a hole or the envelope is falling apart."

j. With regard to the phone in the envelope with uninitialed tape, "This is showing it got checked out….This isn't making any sense. I'm going to have to look, there's three x's in front of the checked out and I don't know what that means."

k. "There is another strip of this candy cane tape and it has Casie Phillips' initials on it and he can't find out, there's no documentation as to why."

l. With regard to whether Calovini has had any other issues or concerns brought to her attention since the merge with the new digital evidence system[7], "So we have noticed there are some dates and times where things are entered at midnight. Property and Evidence doesn't work at midnight, so maybe it was put into a locker to something else. But it's happening fairly frequently." She goes on to say, "We've identified that to Tyler Technologies last, this past week and said we need an explanation as to why that's happening."

m. "The other thing is that if it's, if anyone starts digging into the system, we have also found that the system itself, as it logs as system, is actually doing something that is logging a view on pieces of evidence, documents, that type of thing. We've asked Tyler

[7] Ms. Calovini appears to laugh before answering this question.

> Technologies to please explain that. Because the system shouldn't be registering anything whenever it's doing its processing. It should just be doing it. It shouldn't be logging in our auto logs that its touching pieces of property." When asked by IA if she had seen those issues in the Cunningham case, Calovini says, "Yeah, we have quite a few views." She also confirms, "It shouldn't be doing that. Because this is in April, far after the migration was done. So there should be some log that it was somebody from Tyler or somebody from us was doing that."

C. Post IA Disclosures and Discovery Disputes.

This IA report triggered additional, substantial disclosures. As a result of the thousands of pages of documents dumped on the Defense during a nine-month first-degree murder trial, undersigned counsel sought assistance from outside counsel in dealing with the chain of custody issue.[8] That attorney, Mr. Le Lievre, reviewed the disclosure and sent a letter to the State on February 23, 2026, requesting various pieces of disclosure and interviews. The State objected to the following three requests "as irrelevant, overbroad, a fishing expedition and unduly burdensome":

1. Any and all communication between MCAO and Det. Yeo between May 1, 2025, and the present;

[8] The entire point of retaining Mr. Le Lievre was to avoid delaying trial. Given the enormity of the issue, undersigned counsel could not have dedicated the appropriate time and resources to even understand this issue without a stay or continuance. Undersigned counsel's good faith attempts to avoid delay have only been met by the State's continued resistance to Mr. Le Lievre's involvement as a member of the defense team.

2. Any and all communication (email, text, letter, memo) between Ellen Dahl and/or Tom Van Dorn and/or any law enforcement liaison and any member of the Goodyear Police Department from February 12, 2017, to the present;

3. Any and all recorded conversations between Det. Yeo and any other member of the Goodyear Police Department (civilian or sworn) and/or MCAO;

After the State objected to the disclosure requests, the city of Goodyear followed in lockstep. Counsel for Goodyear, Assistant City Attorney Anthony Polse, parroted the Maricopa County Attorney's Office, saying he too objected to those requests "as overbroad, not relevant, and a clear fishing expedition." **Exhibit 3**. The City of Goodyear, demonstrating what can only be described as an astounding lack of self-awareness, also quipped, "…while the defense request indicates that time is of the essence, the defense created their self-inflicted time emergency as our witnesses we are willing to disclose have been available for interviews since at least January 20, 2026."

C. Casie Phillips

Mr. Le Lievre's disclosure demand letter was sent on February 23, 2026 at 8:27 a.m. In that letter, he requested, "Any and all internal investigations, administrative investigations, complaints, IA, PSB, full personnel file, etc. for Casie Phillips (whether sustained or not)." Casie Phillips was a former employee at the City of Goodyear Property and Evidence Department. She handled evidence in the Cunningham case. The reason for this request was twofold: 1) the IA report mentioned that Casie Phillips left the department involuntarily but did not divulge the reasons why; and 2) Defense discovered (on February 20, 2026), that Ms. Phillips sued the City of Goodyear. As to the latter, the lawsuit (attached as **Exhibit 4**), alleges that Ms. Phillips was terminated, in part, for raising concerns about Goodyear PD's handling of evidence. The lawsuit,

originally filed in October 2024, even mentions Ms. Andrea Gamez by name. It appears that Ms. Phillips alleges, in part, her termination was retaliation for raising serious concerns about mishandling evidence. =One word best describes Ms. Phillips: whistleblower.

In any event, the State suddenly disclosed a few hours later: 1) an email from Mr. Clark and 2) the Casie Phillips lawsuit. The email, authored by Mr. Clark, claimed he discovered the lawsuit after he "googled" Casie Phillips' name. **Exhibit 5**. Mr. Clark claimed he found the lawsuit because he had been reviewing the information received from the Goodyear audit (rather than simply admitting it was due to the demand letter sent to him mere hours before). Mr. Clark also advised he had a family member who worked on the case on behalf of Ms. Phillips.

To date, no additional information has been received regarding Ms. Phillips' misconduct or her involuntary termination. Defense has been led to believe this information is forthcoming.

II. Law and Argument

A. Evidence has Been Admitted Based Upon Fraudulent Chain of Custody.

Before analyzing the State's *Brady* violation, the Defense must first address the serious substantive issue born of this new disclosure: the admissibility of any items already entered as evidence. This Court has entered numerous items into evidence without the Defense possessing the information outlined above. Worse still, this Court (through no fault of its own) has admitted items into evidence without the benefit of this information. Whether a party has laid sufficient foundation for the admission of evidence is within the sound discretion of the trial court, see *State v. Jackson*, 170 Ariz. 89, 93, 821 P.2d 1374, 1378 (App. 1991). But how can a Court exercise sound discretion when the State has withheld material information undermining foundation? The Defense had every right to challenge the authenticity of evidence introduced by the State. They were robbed of that challenge because the State, through its Goodyear proxy, knowingly withheld the existence of chain

of custody issues. The Defense would have objected to the admission of this evidence if the information had been timely disclosed and thoroughly investigated.

A party seeking to authenticate evidence based on a chain of custody must show continuity of possession, but it need not disprove every remote possibility of tampering. *State v. Davis*, 110 Ariz. 51, 53, 514 P.2d 1239 (1973). Furthermore, [a party] need not call every person who had an opportunity to come in contact with the evidence sought to be admitted." *State v. McCray*, 218 Ariz. 252, 256, 183 P.3d 503, ¶ 8 (2008); *State v. Moreno*, 26 Ariz. App. 178, 185, 547 P.2d 30 (1976). Evidence which strongly suggests the exact whereabouts of the exhibit at all times will often be sufficient for chain of custody purposes. *Davis*, 110 Ariz. at 53. Here, the State cannot prove any of these elements given Goodyear PD's mishandling of evidence and manipulation of any logs associated therewith. Goodyear admitted they can and (more importantly) have manually manipulated digital custody logs to match their officers' police reports. That fact, in and of itself, completely negates any chain of custody in this case (and others). One might compare this issue to the scientific method. Most science experiments require a constant and a variable. One compares the variable (which may be subject to change) against the constant (which is immutable). The consistency of the latter allows one to observe possible changes in the former. As applied here, the variable should be the police report. The constant should be the digital custody log. The Goodyear Police Department has inverted the entire system thereby tainting all chain of custody.

This Court cannot, ex post facto, find evidence (previously introduced under the false pretense of secure chain of custody) admissible in light of this new information. Such anachronistic reasoning would rob Mr. Cunningham of his right to a fair trial, effective cross-examination, and due process of law. The phones (and other items) have already been placed into evidence. Defense counsel did not possess the requisite information to challenge the chain of custody or authenticity for

six months of what will be a nine-month trial. The prejudice could not be more self-evident. Moreover, not all information is known about these issues. As outlined above, the investigation into the overarching evidence debacle at Goodyear Property and Evidence is far from complete. The time to answer questions about chain of custody was months ago, before trial (for example, during the May/June 2025 pretrial interviews). The State introduced numerous items into evidence while simultaneously withholding information which undermined their admissibility.

As a brief aside on this point, the importance of chain of custody and authentication cannot now be trivialized as a mere perfunctory ritual. An item may not be entered into evidence unless a party can authenticate it. Authentication requires proof the item is what it purports to be. At each and every trial, parties go to painstaking lengths in establishing chain of custody. If the threshold requirement of possible authentication cannot be met, the item is barred from admission. Any attempt by the State to minimize this basic, yet material, provision of our judicial system should be rejected.

This case presents a unique situation where the outrageous conduct of the Goodyear Police Department casts a pall of doubt over every piece of evidence. That doubt warrants dismissal.

1. Possible Tampering.

Given the State's introduction of evidence based on fraudulent chain(s) of custody, Defense need not present evidence of tampering. But that evidence exists and so, pursuant to the real possibility of substitution or tampering[9], Defense will do so below:

a. Evidence Item 104 – Iphone

The State already introduced Ms. Cunningham's cell phone into evidence. That phone was "sealed" in the envelope with the candy cane tape and no initials. This is the same piece of evidence which, if Det. Yeo is to be believed, he panicked about on January 13, 2026. It is the

[9] See, *State v. Hurles*, 185 Ariz. 199, 207 (1996).

same piece of evidence which motivated his first "deep dive" into chain of custody (also on January 13, 2026). It is the same piece of evidence Det. Yeo was questioned about on May 27, 2025, when Defense pointed out contradictory evidence logs. The State concedes that the mysterious tape, added in violation of Goodyear policy, must have been added between April 2017 and October 2018. As page 8 of the IA report indicates:

- April 26, 2017, Phone signed out to have USA Forensics extract information.

  The package was sealed with clear tape, and it was initialed by Kathy Enriquez. There is no red and white striped tape on the package.
- September 01, 2017, the package shows being moved by Lori Ohrt (previous supervisor, has since retired) at 0420 hours. There is no documentation for this other than the entry into the system.
- The next time the phone was checked out was on October 17, 2018. The phone was signed out to Scott Keely [sic] from RMIN to have him extract information. The photograph taken of the package at this time shows red and white striped tape on the edge of the package with no initials.

b. Evidence Item 104 – Lawn Chair

The lawn chair was seized on February 12, 2017. There was no evidence of any cuts to the lawn chair. There were allegations that the alleged victim was tied to the lawn chair. During an evidence viewing in May 2025, cuts were observed in the lawn chair for the first time.

c. Evidence Item 200 – Pack-n-Play

The pack-n-play was seized on February 12, 2017. There was no evidence that any zip ties had been attached to the pack-n-play. There were allegations that the alleged victim was

bound to the pack-n-play with zip ties. During an evidence viewing in May 2025, a previously undocumented tear in the bottom lining of the pack-in-play was observed.

B. The State Violated Brady and Dismissal is Warranted.

Due process rights are guaranteed in the Arizona Constitution at Article II, section 4: "No person shall be deprived of life, liberty, or property without due process of law." This guarantee is congruent with the Fifth and Fourteenth Amendments to the United States Constitution. *See State v. Herrera-Rodriguez*, 164 Ariz. 49, 52, 790 P.2d 747, 750 (App. 1989); *State ex rel. Romley v. Superior Court*, 172 Ariz. 232, 836 P.2d 445 (App. Div. 1 1992). Due process of law is the primary and indispensable foundation of individual freedom in our legal system. *Application of Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). Our Supreme Court has held that denial of due process is a denial of fundamental fairness, shocking to a universal sense of justice. *Oshrin v. Coulter*, 142 Ariz. 109, 688 P.2d 1001 (1984). *See Kinsella v. U.S. ex rel. Singleton*, 361 U.S. 234, 80 S.Ct. 297, 4 L.Ed.2d 268 (1960); *Crouch v. Justice of Peace Court of Sixth Precinct*, 7 Ariz.App. 460, 466, 440 P.2d 1000, 1006 (1968).

In *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985), the United States Supreme Court held that evidence is material if there is a reasonable probability that the disclosure would have altered the result at trial. It was decided in *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), that the due process clauses of the Fifth and Fourteenth Amendments give the defendant the right to access any evidence favorable to the defense and material to either guilt or punishment.

The defendant in a criminal case has a right to effective cross-examination of a witness at trial. *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1005, 39 L.Ed.2d 347 (1974); *State ex rel. Romley v. Superior Court*, 172 Ariz. at 236, 836 P.2d at 449. With regard to impeachment evidence, as

contrasted with exculpatory evidence, the *Bagley* court recognized the need for evidence for the two different purposes but refused to draw a distinction for the purposes of *Brady*-mandated disclosure: "Impeachment evidence, however, as well as exculpatory evidence, fall within the *Brady* rule. Such evidence is 'evidence favorable to an accused' so that, if disclosed and used effectively, it may make the difference between conviction and acquittal." *Bagley*, 473 U.S. at 676, 105 S.Ct. at 33 (emphasis added and citations omitted); *See also Giglio v. U.S.*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) ("nondisclosure of evidence affecting credibility falls within this general [*Brady*] rule.") *State ex rel. Romley v. Superior Court*, 172 Ariz. at 239, 836 P.2d at 452. The *Romley* court concluded that "any restrictions on defendant's access to information essential to preparation for effective, reasonable cross-examination or impeachment of . . . a witness . . . must be proportionate to the interest of protecting the . . . witness . . . as balanced against the defendant's due process right to a fundamentally fair trial." *State ex rel. Romley v. Superior Court*, 172 Ariz. at 240, 836 P.2d at 453.

To comply with *Brady/Giglio*, the prosecution is required unilaterally to disclose any impeachment or exculpatory evidence that is favorable to the defendant and which may create a reasonable doubt in jurors' minds regarding the defendant's guilt. *See Strickler v. Greene*, 527 U.S. 263, 281-82, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999); *State v. Montano*, 204 Ariz. 413, 424, ¶52, 65 P.3d 61, 72, *supplemented by* 206 Ariz. 296, 77 P.3d 1246 (2003). When, as here, "the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within this general rule." *Giglio*, 405 U.S. at 154 (citation omitted). Regardless of good or bad faith, a state's failure to adhere to *Brady/Giglio* by willfully or inadvertently suppressing favorable evidence violates a defendant's due process rights. *See Brady*, 373 U.S. at 86-87; *see also Giglio*, 405 U.S. at 155.

A more recent Arizona Supreme Court case has given clear guidance on what constitutes prosecutorial misconduct. Prior to this decision, the State would often claim prosecutorial misconduct only occurred when the State willfully, intentionally, and purposefully withheld evidence favorable to an accused. But in *In re Martinez*, 248 Ariz. 458 (2020), the Court made it clear that prosecutorial misconduct is not always unethical conduct. The term "prosecutorial misconduct" broadly encompasses any conduct that infringes a defendant's constitutional rights. *Id.* It sweeps in prosecutorial conduct ranging from inadvertent error or innocent mistake to intentional misconduct. *Id.* Here, the State's conduct cannot be characterized as mere error or mistake.

Actual knowledge is not required for a *Brady* violation. Before remand back to State court in *Milke*, the Ninth Circuit Court of Appeals ruled that actual knowledge of witness misconduct is not required for a *Brady* violation; inadvertent failure to disclose is enough. *Milke v. Ryan*, 711 F.3d 998, 1017 (9th Cir. 2013), (see also *Strickler*, 527 U.S. at 282). Moreover, the Court ruled that that the fact the impeachment material was available in the public record did not diminish the state's obligation to produce the evidence under *Brady*. *Id*. The Ninth Circuit Court of Appeals has also addressed the role of reckless behavior and prosecutorial misconduct *in United States v. Chapman*, 524 F.3d 1073, 1084 (9th Cir. 2008). In *Chapman*, the Ninth Circuit agreed with the Government that accidental or merely negligent governmental conduct is insufficient to establish flagrant misbehavior resulting in dismissal. *Id.* But in affirming the lower court's dismissal of the indictment, the *Chapman* court also found that reckless disregard for the prosecution's constitutional obligations can constitute flagrant misbehavior justifying dismissal. *Id.*

Even if this Court could make an ex post facto finding that the evidence should have been admitted anyway (which seems impossible given the phantom entries, backend manual modifications to digital custody logs, policy violations, concealment, etc.) this information could still have been used to attack the weight of the evidence. "Flaws in the chain of custody normally go to the weight the jury gives to the evidence, not its admissibility into evidence." *State v. Morales*, 170 Ariz. 360, 365, 824 P.2d 756 (1991). Attacking the weight of evidence is inherently impeachment material. The State failed to disclose vital impeachment evidence regarding Goodyear Police Department's misconduct and systematic custody failures for years. This impeachment was vital in not only contesting authenticity, but the reliability of the State's evidence. Evidence has not only been introduced without proper foundation, but without adequate challenge.

Any *Brady* analysis must be measured against the timing of the late disclosure. Here, the State disclosed Goodyear PD's rampant misconduct:

- Ten years after alleged charges;
- Nine years after the indictment;
- Eight years after Defendant's Request for Disclosure;
- Eight years after the envelope holding the phone was handled and taped without documentation as to who did it or why;
- Eight years after that same phone was tethered to a wifi hotspot when it was supposed to be off and in Goodyear Property and Evidence;
- Four years after Casie Phillips' involuntary termination;
- Three years after Casie Phillips' lawsuit alleged mishandling evidence;
- Eight months after Yeo's Pretrial Defense Interview(s); and

- Six months after trial began.

The State was put on actual notice (not that notice was needed) on May 27, 2025, when Defense asked Det. Yeo about apparently erroneous evidence logs. Det. Yeo's ultimate response was a parroted lie from Property and Evidence Supervisor Andrea Gamez. The information withheld by the State clearly falls under *Brady*, and it was clearly disclosed late.

This information was in the State's possession and control. Indeed, it was at their fingertips. Det. Yeo was able to do his "deep dive" into the evidence via computer on January 13, 2026 (apparently during trial). He easily tabbed through the different screens using the Goodyear Police software and immediately saw all the "wacky" log entries. Aside from the digital evidence which documented the misconduct and other issues, Andrea Gamez said it had been a problem for years. Ms. Gamez told Det. Yeo that all the Property and Evidence personnel did the same thing. Ms. Gamez told Det. Yeo that sworn officers at Goodyear PD (Lieutenant Greg Garner and Officer Mark Moncado), knew about these issues. Incredibly, even Ms. Gamez's supervisor, Jennifer Calovini, admitted to knowing about these issues.[10] Ms. Calovini told IA that she knew there were strange times documented in the log system and that the system was also randomly creating entries that evidence was viewed and/or touched. She only contacted Tyler Technologies about this issue after January 14, 2026. In Defense's estimation, Ms. Calovini is just as, if not more, culpable than Ms. Gamez.

Since the misconduct began to rear its ugly head on January 14, 2026, the State has inundated the Defense with documents that amount to little more than red herrings. The State disclosed Goodyear evidence audits and inventories. But these documents only prove that the items placed into

[10] This calls into question why Ms. Calovini was not placed on administrative leave along with Ms. Gamez. She is Ms. Gamez's supervisor and knew about the same issues Ms. Gamez told Det. Yeo about.

evidence are still in evidence when Goodyear checks (meaning the items have not been lost). That does little to explain why items are checked in and out at odd hours. And the audits certainly do not identify which logs were manipulated by which employees. In any event, Goodyear violated their own policy by failing to conduct these audits in a timely fashion. The absurdity is no better exemplified than in the following statement from Goodyear's January 2026 IA report, "Annual inventories occur every year, with the last annual completed in 2022. Currently there is an annual inventory underway." Goodyear's system of accountability is beyond parody. Of course, the entire point of an audit is to identify issues. Once issues are identified, they are, presumably, remedied. But here, Goodyear was aware of these issues for years. Audits which fail to investigate issues already known to the department (but concealed nonetheless), hardly inspire confidence in their efficacy or reliability.

Arizona caselaw is clear that dismissal with prejudice is an appropriate remedy when the State acts in bad faith. In *State v. Youngblood,* 173 Ariz. 502 (1993), the Arizona Supreme Court discussed the importance of fundamental fairness to ensure due process regarding unpreserved potentially exculpatory evidence. It stated: "When the state exhibits bad faith in the handling of critical evidence, it is fundamentally unfair to allow the trial to proceed. The court's remedy is to tell the state it will not be allowed to prosecute the case in our courts. Bad faith strengthens the inference that the evidence might be exculpatory to an unacceptable level." *Id*. In *State v. Lopez*, 156 Ariz. 573, 575, (1987) the Court held that "[w]hen the state receives a specific request for such evidence, failure to disclose is seldom, if ever, excusable." Here, the Defense asked for specific information relating to both *Brady* and this chain of custody issue on numerous occasions. This violation persisted even during trial. The State defied not only their affirmative duty to disclose this evidence, but ignored Defendant's requests for the same. That conduct, coupled with Goodyear's lie in response to the

Defense's pretrial interview questions, constitutes egregious misconduct. Refusing to impose a serious sanction will only endorse such governmental behaviors. If a defendant cannot rely on both the case agent and the prosecutor's representations about a material issue in preparation for trial, then what good is pretrial preparation?

Claiming that the Defense now has this information (on the backend of a nine-month trial) will almost assuredly be an argument advanced by the State in response to this pleading. Such an argument misses the mark. The behemoth that is this *Brady* violation can hardly be wrestled in short order. Defense put the State on notice of this potential issue on May 27, 2025. By the State's own admission, the lie advanced by Det. Yeo (allegedly concocted by Gamez), was accepted by the Defense at his pretrial interview. But even now, the Internal Affairs investigation is still pending. Ms. Gamez has not been interviewed. The State has not disclosed numerous additional documents requested by the Defense. The State has refused to disclose other documents requested by the Defense. Goodyear PD has refused to disclose some documents requested by the Defense. Casie Phillps (who handled evidence in Mr. Cunningham's case), was fired for misconduct, but the State never disclosed any information relating to her involuntary termination. Ms. Phillips alleged misconduct against Andrea Gamez and her handling (or mishandling) of evidence at Goodyear PD. But the State never disclosed any information relating to any prior allegations against Ms. Gamez.

Aside from the pending disclosure and inevitable litigation associated therewith, the Defense does not have adequate time to effectively address this issue. There is no time for the Defense to fully investigate the manual manipulation of evidence logs, digital system failures that allegedly created phantom log entries, digital system failures that allegedly resulted in logs showing evidence had been "touched", contradictory log entries, or items erroneously marked for destruction. There is less time still to track down employees who no longer work at Goodyear (mentioned in the IA report) and

interview them. Defense would need the metadata associated with the two digital log systems (the former LERMS and the current RMS) and have an expert analyze that metadata to assess any claims advanced by the State. As this Court can understand, it is not for the Defense to simply accept Goodyear Police Department, or MCAO's, representations regarding chain of custody in this case. The State, through Goodyear PD, has blatantly lied in response to Defense questions about chain of custody.

Of note, the State's late disclosure of authentication issues has been referenced in appellate caselaw. In the unpublished case *State ex rel. Polk v. Hancock*, 2014 Ariz. App. Unpub. LEXIS 1256, *1-2, "[the defendant] argued the late disclosure gave him 'insufficient time' to 'address the foundational chain-of-custody issues disclosed.'" **Exhibit 6**. The trial court granted a continuance of trial in that case. Here, there can be no continuance.

And while the State's late disclosure is the sole source of this conundrum, true to form, they make no such concession. A recent email from Goodyear's counsel claimed the urgency of the situation was "self-inflicted" by the Defense because this information was provided on January 20, 2026. Setting aside the absurdity of this claim in the context of this case's general timeline, attorneys need time to read, research, compare, analyze, investigate, and incorporate disclosure once it is provided. Such due diligence ensures that an attorney meets their legal and ethical obligations. Such due diligence, for example, might help prosecutors or city attorneys avoid serious *Brady* violations.

Relevant disclosure remains outstanding. Yet the same government entity that engaged in, concealed, and reluctantly disclosed rampant misconduct and systematic failures, now claims the Defense is the problem. There is no remorse, accountability, or introspection. There will be none unless this Court holds them accountable.

1. Prior Disclosure Violations and Issues.

A prosecutor and/or prosecutorial agency's prior violations of their disclosure obligations is relevant in determining misconduct. As the Court noted in *In Re Martinez*, "If anything, what is notable about the age of the claims is the systemic failure to timely scrutinize Martinez's conduct under the ethical rules." *In re Martinez*, 248 Ariz. at 468. The Court went on to say that, "…the failure of a court to report is not evidence that an ethical violation did not occur. Such inaction does not tie our hands in enforcing the ethical rules." *Id*. at 469. The Court also adopted the Arizona State Bar's aggravating factor of "pattern of misconduct" in that case. *Id.* at 471. Our Arizona Supreme Court has made it clear that prosecutorial misconduct covers a wide range of acts (or omissions). A Court should consider whether misconduct has become systematic. Misconduct, whether intentional or reckless, should be the exception, not the rule. Because it has become the latter, and to uphold the appellate record, other cases should be considered by this Court:

a. *Diponzio*

The Diponzio matter involved widespread misconduct by a (now) former Phoenix homicide detective. Det. Jennifer Diponzio was found to have performed well-below adequate law enforcement standards. After she was confronted about her deficient performance, Det. Diponzio suddenly went on extended leave due to alleged medical issues. After her departure, numerous pieces of evidence and/or investigatory items (spanning several homicide cases) were found at her desk (as opposed to secure evidence lockers or the Property and Evidence Department). Fellow officers were forced to write supplemental reports about the evidence found at her desk. This information was withheld from defendants in numerous serious felony cases. Both the Maricopa County Attorney's Office and the Phoenix Police Department obfuscated defense investigations, requiring judicial

intervention to obtain disclosure. Here, the systematic police misconduct in Goodyear is far more egregious, widespread, and nefarious than the actions of a singular detective.

b. Eisentraut

Judge Kathleen Cooper ordered a homicide case dismissed with prejudice in *State v. Sanford*, CR2017-001324-001. In reviewing the minute entry, much of the order dismissing the case with prejudice was based upon the Maricopa County Attorney Office's outrageous Brady violation(s). **Exhibit 7**. Specifically, the State failed to turn over impeachment evidence pertaining to Det. Cristie Eisentraut. Det. Eisentraut was caught "presenting false sworn testimony to the grand jury" in yet another case, *State v. Schroeder*, CR2017-132477-001. This mirrored the false testimony she presented to the grand jury in the *Sanford* case. The State was aware of Det. Eisentraut's penchant for perjury but ·withheld that information from Defendant Sanford. Based on Judge Cooper's Minute Entry, it appears the State failed to appreciate any of their misconduct.

c. State v. Rodriguez et al., CR2019-006125

In *State v. Rodriguez et. al.*, a complex, multi-codefendant, fraud trial was dismissed with prejudice pursuant to *Arizona Rules of Criminal Procedure*, Rule 15.7 after the Maricopa County Attorney's Office disclosed hundreds of thousands of pages of documents on the eve of trial. **Exhibit 8**.[11] In rejecting the prosecution's claim that the disclosure was still provided more than seven (7) days before trial started, the Court stated:

> The State appears to suggest that as long as all disclosure is completed not later than seven days before trial, it has met its disclosure obligations. *See* Response, at pages 6-7. The Court rejects this assertion as inconsistent with Arizona case law and common sense. *See*, *e.g.*, *State v. Martinez-Villareal*, 145 Ariz. 441, 448 (1985) (delay may constitute prejudice under the discovery rules). When the State charges an individual with a criminal offense, it has an immediate and continuing duty to disclose all of the evidence that bears on that charge. Late disclosure should be a rare exception to this rule, and occur only in such circumstances that the

[11] The matter is currently pending on appeal.

> evidence would not otherwise have been discoverable in the exercise of reasonable diligence.

Even in that case, the Maricopa County Attorney's Office conceded (in part), the logic of a continuance. Here, the situation is worse. First, the Parties are entering their seventh month of trial (thereby negating the possibility of a pretrial continuance). Second, the nature of the disclosure violation in Mr. Cunningham's case is more egregious (insofar as the present disclosure is clearly exculpatory in nature). And third, whereas the substantial late disclosure in *Rodriguez at al*. was complete (insofar as no more was expected), the same cannot be said here, where additional disclosure and investigation is still required.

d. *State v. Solorio*, CR2017-000890-001

The assigned prosecutor in the present case (Mr. Clark) was previously sanctioned for a disclosure violation in another child death case. In *State v. Solorio*, CR2017-000890-001, the Court found that the State's non-disclosure of material evidence (a third-party alternative's prior felony convictions) constituted a Rule 15 violation. **Exhibit 9**. The Court noted that the Defense found the information, "three years after the request was made and almost three years from the date compliance was required." Aside from the State's non-disclosure, the Court noted it was only after the State was confronted with their violation that they "reluctantly and conditionally" confirmed it was true. The Court found that, "the State should have exercised more due diligence. Furthermore, the State, having been presented with their error by Defendant, should have been more courteous and helpful in verifying the information." The Court imposed a financial sanction against the Maricopa County Attorney's Office for their discovery violation.

In *Solorio*, the Court accepted Mr. Clark's representation that the non-disclosure was mistake or inadvertence (thereby finding no misconduct). If offered as an excuse in this case, then the benefit of the doubt should not be extended.

2. Det. Yeo's Comments.

Many of Det. Yeo's IA interview statements are concerning, but several imply he feigned ignorance of these issues. It is hard to believe that Det. Yeo, who has been with Goodyear PD for eighteen years, was unaware evidence logs were manipulated. He is either incompetent or lying. As the case agent, Det. Yeo said he did not deep dive into the evidence or the logs associated therewith until January 13, 2026, after hearing cross examination that made him nervous. That seems impossible for a lead detective and case agent on a prior capital case who has been involved since day one of the investigation. And while Det. Yeo told Internal Affairs he did not look into the issue until January 2026, that is not what he told Defense on June 5, 2025. In response to the May 27, 2025, question about the custody log, Det. Yeo told Defense on June 5, 2025, that he had done research into their evidence system. If he did that, then Det. Yeo had actual knowledge of these issues nine months ago.

Det. Yeo's concern that Defense "knew" something was wrong with the chain of custody betrays the absurdity of his own position. Defense thought there was an issue. Defense asked about the issue. Defense was then lied to about the issue during a pretrial interview. Det. Yeo seems to think a first-degree murder trial is some game of Battleship, where *Brady* is disclosed only as a "preemptive strike." Det. Yeo's IA quote bears repeating, as it demonstrates his disdain for the Defense and dereliction of his own duty:

> I can tell you the only reason, actually, I brought this up, so, I can tell you, I had a strong feeling that the Defense was on to this, based upon that defense interview. And then based upon what's been talked about in a roundabout way in trial with other witnesses. I'm smart enough to know. They knew something was wrong.

At best, Det. Yeo disclosed this information six months into trial because, "[t]he Defense, I think they know damn well that this is here and they're waiting for me to get on the stand and talk about this." At worst, he was part of the cover up.

Of note, Det. Yeo also told IA that the prosecutors knew about this problem. Although he failed to expand upon this during his IA interview, Defense has requested additional documentation regarding his communications with prosecutors in this case.

2. Casie Phillips' Lawsuit.

The Casie Phillips' federal lawsuit, in and of itself, is a *Brady* violation. The State had actual knowledge of the suit, as Goodyear was served and even filed an answer. The suit itself outlines several deficiencies within the police department, including lack of training and mishandling evidence. It was only disclosed ***after*** the Defense had already discovered it, and demanded information on Ms. Phillips' involuntary termination from Goodyear PD. Goodyear knew about Ms. Phillips and Ms. Gamez, their involvement in the Cunningham case, and their misconduct. Still, they withheld the lawsuit.

Goodyear's August 5, 2025, Answer to Ms. Phillips' Amended Complaint was conspicuously missing from the State's disclosure. In it, Goodyear responds to Ms. Phillips' allegations about evidence issues and Ms. Gamez as follows:

> Defendants admit that Plaintiff reported concerns and problems relating to the training of the new CSSs, but lack sufficient knowledge or information to admit or deny the remaining allegations in this paragraph and therefore deny same.

No doubt the State will suddenly have substantial evidence to deny these claims in response to this pleading.

Given Mr. Clark's claim that he randomly searched Ms. Phillips' based upon the IA report he received a month before, rather than the demand letter he received mere hours before, Defense would like more information about when he first learned of this suit.

D. The State Violated Rule 15.1.

The *Arizona Rules of Criminal Procedure* codify the State's *Brady* obligation under Rule 15. Pursuant to *Arizona Rules of Criminal Procedure*, 15.1, "The State must make available to a defendant all existing material or information that tends to mitigate or negate the defendant's guilt or would tend to reduce the defendant's punishment." On January 11, 2018 the Defense filed a request for Brady material, requesting "[a]ll material or information which tends to mitigate or negate the defendant's guilt as to the offense charged, or which would tend to reduce defendant's punishment…" Besides their rule-imposed obligation to disclose Brady, the State also avowed in its Rule 15.1 filing on February 9, 2018 that "[t]he State is unaware of any existing material or information, unknown to the defense, that would tend to mitigate the defendant's guilt or punishment. Pursuant to *Kyles v. Whitley*, 514 U.S. 419, 437-438, 115 S. Ct. 1555, 1567-1568 (1995), the State will review any evidence in its possession, determine if any of it is exculpatory, and, if so, turn such evidence over to the defense." Later, the Defense further signaled its interest in accurate chain of custody records in a discovery request submitted to the State on January 26, 2022, asking for a "[c]opy of chain of custody for items 407A and 407B." When the State sent chain of custody records in fulfillment of that request, it did so avowing them to have been accurate. At the very least, it gave no warnings of the systemic lack of credibility undergirding Goodyear P&E chain of custody records. And, as noted above, the Defense also specifically asked for chain of custody-related information during its May 27, 2025 pretrial interview of Det. Yeo.

Arizona Rules of Criminal Procedure, Rule 15.1(f) governs the extent of State's disclosure obligation. That section specifically mandates:

> The State's disclosure obligation extends to material and information in the possession or control of any of the following:

> (1) the prosecutor, other attorneys in the prosecutor's office, and members of the prosecutor's staff;
>
> (2) any law enforcement agency that has participated in the investigation of the case and is under the prosecutor's direction or control; and
>
> (3) any other person who is under the prosecutor's direction or control and who participated in the investigation or evaluation of the case.

Here, the Goodyear Police Department is a law enforcement agency that has obviously participated in the investigation and is under the prosecutor's direction and/or control.

Arizona Rules of Criminal Procedure, Rule 15.6 governs the State's continuing duty to disclose. That rule states, "The parties' duties under Rule 15 are continuing duties without awaiting a specific request from any other party." This rule makes it abundantly clear that the State has an affirmative duty to comply with their disclosure obligations. A defendant has absolutely no duty to make inquiry about *Brady*. With regard to timing, Rule 15.6(c) mandates that all Rule 15 disclosure must be provided no later than 7 days before trial.

Arizona Rules of Criminal Procedure, Rule 15.7 outlines the consequences for disclosure violations:

> In considering an appropriate sanction for nondisclosure or untimely disclosure, a court must determine the significance of the information not timely disclosed, the violation's impact on the overall administration of the case, the sanction's impact on the party and the victim, and the stage of the proceedings when the party ultimately made the disclosure. Available sanctions include, but are not limited to:
>
> > (1) precluding or limiting a witness, the use of evidence, or an argument supporting or opposing a charge or defense;
> >
> > (2) dismissing the case with or without prejudice;
> >
> > (3) granting a continuance or declaring a mistrial if necessary in the interests of justice;
> >
> > (4) holding in contempt a witness, a party, or a person acting under the direction or control of a party;

(5) imposing costs of continuing the proceeding; or

(6) any other appropriate sanction.

Here, the appropriate sanction is dismissal with prejudice. The State late-disclosed impeachment material which undermines the integrity of evidence. The State late-disclosed impeachment material which undermines the integrity of Goodyear officers and employees. The pervasive and widespread nature of this *Brady* material (the misconduct and systemic log failures) could have changed the entire trajectory of this trial had it been properly disclosed and investigated. Instead, the State began disclosing this information six months into trial. This occurred after the testimony of numerous witnesses, and after the admission of several items into evidence.

The Defense can think of no other appropriate sanction. A continuance of a 2017 homicide case six months into trial, with seven attorneys and two codefendants, would be logistically impossible (and prejudicial to Mr. Cunningham). Mr. Cunningham should not be forced to waive time because of the State's disclosure violation. So too, Defense does not want a mistrial, especially as this issue is solely attributable to the State. Defense is not aware of any legal mechanism which permits the preclusion of items already admitted as evidence in a trial. And, in any event, preclusion can neither turn back the hands of time, nor grant Defense the additional time it needs to fully investigate the newly disclosed issues. The analysis under *Arizona Rules of Criminal Procedure*, 15.7 favors dismissal with prejudice.

III. Conclusion

The prejudice occasioned by the State's misconduct cannot be cured. The well has been poisoned. The bell cannot be unrung. And the ship has sailed. In the case that is *State v. Cunningham*, investigated in 2016, charged in 2017, brought to trial in 2025, and upended in 2026, the State disclosed manipulation of custody logs, evidence tampering, and widespread system failures because

they believed they were caught. The State's *Brady* requirement was triggered not by their affirmative obligation, but by their own self-preservation.

It is difficult to articulate the overwhelming prejudice associated with the late disclosure. Numerous witnesses have testified unchallenged about the misconduct. Several pieces of evidence were admitted without contesting their authenticity. The Defense was robbed of foundational objections. And both the State and Defense's investigation into these issues is far from over. The IA is pending. The implications for the misconduct and systematic failures, if properly investigated and proven, are as powerful as they are far-reaching. The Goodyear Police Department's Property and Evidence Department effectively destroyed the reliability of any evidence in this case (and likely countless others). Because the State robbed the Defense of this information for years, Mr. Cunningham has been deprived of a fair trial, effective assistance of counsel, and his right to confront and cross-examine the State's witnesses. The basic premise of criminal trial practice is the State's burden. They must present evidence beyond a reasonable doubt to secure a conviction. It is for the Defense to attack that evidence. Here, the Defense has been forced into battle without its rightful weapon: impeachment evidence of the highest order.

Defense will leave this Court with the same urging from the Arizona Supreme Court in *Tucker*:

> We repeat our disapproval, this time mindful that appellate rebuke without reversal may amount to no more than an easily-ignored verbal spanking. While upsetting a criminal conviction is a drastic step, it is one we may in the future be required to take, pursuant to our inherent supervisory authority, if it is the only way to deter prosecutorial defiance of court rules.
>
> Moreover, we note that it is the trial court's responsibility to enforce our disclosure rules. Trial court judges are far more able than we to ensure that prosecutors do not ignore their Rule 15 obligations. When necessary, trial judges possess the power to invoke sanctions -- including holding *counsel* in contempt -- for failure to comply with discovery rules. Rule 15.7(a)(3). Perhaps the time has come to make clear that these sanctions are not merely a paper tiger.

State v. Tucker, 157 Ariz. 433, 438, 759 P.2d 579, 584 (1988).

This Court should remind the State that these sanctions have fangs. Accordingly, Mr. Cunningham asks that this matter be dismissed with prejudice.

RESPECTFULLY SUBMITTED this 8th day of March, 2026.

By:/s/Taylor W. Fox
Attorney for Defendant

By:/s/Natalee Segal
Attorney for Defendant

E-filed this 8th day of March, 2026, to:

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EXHIBIT 1

Goodyear Police Department

Internal Affairs Unit

11 North 145th Avenue

Goodyear, AZ 85338

P 623-932-1220

ADMINISTRATIVE INVESTIGATION

AI2026-0001

GOODYEAR POLICE DEPARTMENT – INTERNAL INVESTIGATIONS
AI2026 - 0001

Complaint Date and Location:

January 14, 2026,
Goodyear Police Department Property and Evidence
2711 South La Luna, Goodyear, AZ 85338

Investigator:

Sergeant Sarah Cannon #1155
Internal Affairs Unit
Goodyear Police Department

Subject Employee Name(s):

Andrea Gamez
Property and Evidence Supervisor
Goodyear Police Department

Witness Name(s):

Detective Noah Yeo #1167
Special Victims Unit
Goodyear Police Department

Jennifer Calovini
Support Services Manager
Goodyear Police Department

Property Employees:

Employee Name	Date of Hire	Termination Date	Reason for termination
Lori Ohrt	05.09.05	11.29.21	Voluntary
Ellizabeth Raisor	06.06.16	03.24.17	Involuntary
Bruce Gillum	07.17.17	10.14.22	Voluntary
Casie Phillips	030.2.20	10.31.23	Involuntary
Andrea Gamez	09.13.99		On city paid leave
Rachel Tarasewicz	10.13.25		Active
Courtney Hamaker	01.12.26		Active
Carl Aftosmes	02.07.22		Active

Policy Violation(s) Allegations:

- **Mishandling Documents / Property.**

  Mishandling, misplacement, or reckless loss of documents or property.

  CLASS 2

- **Improper Handling of Evidence.**

  Personnel shall not convert to their own use, manufacture,

  conceal, falsify, destroy, remove, damage, tamper with, or withhold any property or evidence

  in connection with an investigation or other police action except in accordance with

  established agency procedures.

  CLASS 2

- **Failure to Supervise.**

  Inadequately or failing to supervise per the standards outlined in City and

  Department policy and Department expectations.

  CLASS 2

- **Other Policy Violation.**

  Any knowing or negligent violation of the provisions of the Department and City policy, operating procedures, or other written directive of an authorized supervisor that is not **otherwise covered in this section.**

  CLASS 2

- **Jeopardizing Integrity / Security**.

  Any action by an employee that jeopardizes the integrity or security of the Department which calls into question the employee's ability to perform effectively and efficiently in the employee's position or casts doubt upon the employee's integrity.

  CLASS 2

- **Unsatisfactory Performance.**

  Any employee performance not listed above, including, but not limited to, careless work, failure, incompetence, inefficiency, or delay in performing and/or carrying out proper orders, work assignments, or following instructions without reasonable and bona fide excuse.

  CLASS 0

On January 15, 2026, the Internal Affairs Unit (IAU) received notification from the Chief's Office that an internal complaint was received regarding City of Goodyear Property and Evidence Supervisor, Andrea Gamez. It was on January 14, 2026, when it was learned that questionable, and possible improper packaging and/or re-packaging techniques, and date and time manipulation on the back end of the property and evidence database was being practiced by Gamez and the other property and evidence technicians. This was discovered by Detective Noah Yeo while he was in trial regarding case #2017-0006390.

On January 15, 2026, Property and Evidence Supervisor, Andrea Gamez, was then placed on paid administrative leave by the Office of the Chief, pending further investigation.

The issues identified by Detective Yeo are as follows:

- Conflicting or discrepancies with property entry dates and times
- Property showing as destructed, but later found and still housed in Property and Evidence
- Re-packaging and re-taping evidence without proper documentation
- Property and evidence technicians' ability to manipulate dates and times of property entered within the database without documentation
- Possible errors within the software system used by the Goodyear Police Department
- Logging of evidence viewed by the "system" (RMS)

Based upon the initial information given to the Office of the Chief, Internal Affairs conducted initial fact finding with Detective Yeo and Jennifer Calovini in order to gain a better understanding of the concerns brought up by Detective Yeo.

Summary of interview with Detective Yeo (witness):

On January 23, 2026, Internal Affairs Sgt S. Cannon #1155 and Lieutenant J. Bayer #1208 conducted an audio recorded interview with Detective Noah Yeo #1167 in the Internal Affairs office. Detective Yeo declined to have an employee representative with him. Prior to the interview, Detective Yeo was issued his Notice of Investigation (NOI) and Garrity rights.

Detective Yeo has been with the Goodyear Police Department for just over 18 years. Detective Yeo has been a detective since 2014. While working in the Criminal Investigations Bureau, he has been in the Special Victims Unit since 2020.

Detective Yeo was asked to describe how all this information came about during his trial. Detective Yeo said he had a defense interview in May of 2025 which was conducted by the defense attorneys involved in this case. He recalled one of the defense attorneys asking questions about property items numbered 103 and 104. The item number listed as #103 is a Blackberry and item #104 is an I-phone 6S. These items belong to the defendants in this case and were initially seized on February 12, 2017.

The question asked by the defense attorney was regarding the chain of custody for these items. The defense attorney wanted to know why on March 9, 2017, item #104 shows a 0100 hours sign out time. At the time, Detective Yeo answered that he wasn't sure why it showed this time frame for the property entry. Yeo further stated he had a search warrant for the purposes of extracting the information from the phone and he actually received the phone on March 9, 2017, at approximately 1316 hours from the property custodian, Elizabeth Raisor (Raisor is no longer employed with the City of Goodyear). The chain of custody then went from Detective Yeo to Detective McCure who received it at approximately 1330 hours.

Detective Yeo and Detective McCure both documented the phone retrievals in supplemental reports and there is also chain of custody documentation.

After being asked this question by the defense attorney, in May of 2025, Detective Yeo returned to the Goodyear Police Department and met with Gamez. Yeo asked Gamez why the property showed it was signed out at 0100. Gamez responded by saying she wasn't sure and maybe it could have been her (Elizabeth Raisor) "fat fingering" the time entry. At the time of their discussion, Yeo thought it was possible as well because of the times both involving 1 o'clock.

Yeo continued by saying he was also asked by the defense attorney why it shows the phone being turned in on the 13th of March when he entered them on the 10th. Detective Yeo was able to explain this by the fact that the 10th was a Friday when McCure turned them in and they were then entered by property and evidence on the following Monday, which was the 13th, at approximately 1100.

Detective Yeo continued by talking about the phone and the number of times it was signed out and the reasons why. Detective Yeo had the phone extracted three times, which is why the phone was checked out. Yeo said most of the time discrepancies can be explained by the property being secured in an evidence locker by an officer or detective after hours and the property technician wouldn't retrieve and then enter the property until the following business day.

The next issue that came up was when one of the phone forensic specialists was on the stand and photographs of the package for item 104 (white I-Phone 6S), were being shown to the court. Detective Yeo noticed the package had the tape with initials for every investigator who opened the package to retrieve the phone except for one strip of tape at the top of the package. This tape was red and white striped, and

it did not have any initials on any part of it. Yeo didn't remember seeing this tape any other time prior to the start of trial. Detective Yeo was able to produce the photographs taken of the package prior to opening and after opening, for each person who accessed it for the purposes of this case. At this time, it is unknown who placed the red and white striped tape on the package. The time frames below show when the phone was signed out and by who. Photographs of these times when the phone was checked out and to who show initials on all the clear tape by the appropriate investigators, but nothing on the red and white striped tape.

- March 09, 2017- Phone signed out by Detective Noah Yeo (with issues of times of sign out)

  The package was sealed with clear tape, and it was initialed by Detective McCure. There is no red and white striped tape on the package.
- April 26, 2017- Phone signed out to have USA Forensics extract information.

  The package was sealed with clear tape, and it was initialed by Kathy Enriquez. There is no red and white striped tape on the package.
- September 01, 2017, the package shows being moved by Lori Ohrt (previous supervisor, has since retired) at 0420 hours. There is no documentation for this other than the entry into the system.
- The next time the phone was checked out was on October 17, 2018. The phone was signed out to Scott Keely from RMIN to have him extract information. The photograph taken of the package at this time shows red and white striped tape on the edge of the package with no initials. There was, however, clear tape sealing the package and initialed by the forensic examiner, Scott Keely.

Further review shows there is no documentation for when this striped tape was applied to the package. To clarify, sometime between April 26th of 2017 and October 17th of 2018 is when the red and white striped tape was applied to the package, however there is nothing to show who did this or when this occurred.

Yeo continued by pulling up RMS which is the system the Goodyear Police Department uses to house digital records and everything involving property and evidence. Yeo accessed his case in the system and pulled up the tab labeled, "Property Room History". Yeo points out that on multiple occasions, the property is showing it checked out at all different times in the early morning hours when no one is working, such as 0100, 0300 etc.

Another issue noted by Detective Yeo is when someone returns the property back to the property room, it doesn't show when the property was returned. Yeo explained the reason for this is, all that is required to return evidence items is filling out a piece of paper and putting the evidence back in an evidence locker, for retrieval by the Property and Evidence technician. This can be seen in the chain of custody tab in RMS.

Yeo stated he further recalled that in May of 2025 when he attended an "evidence viewing" for his case, the property in RMS shows Gamez signed out the evidence items as one bulk item. Yeo was viewing the sign out times for this property, and he noticed it shows the property being signed out on March 09, 2017, at 0100 hours, but then again at 1316 hours on the same day when he picked up the property.

On January 14, 2026, Detective Yeo met with Gamez and told her about what he had discovered. When Gamez was asked why all these items were showing so many strange times of being checked out as well as the actual times they were checked out, Gamez stated this has been an ongoing issue for several

years and the "wacky" times have been in the system for years. She continued by telling Yeo that she thought it was a software issue and that IT had been involved a couple of times where they tried to duplicate the problem, but they couldn't. Gamez also stated several people knew about this issue including Mark Moncada who conducts the non-audits of property and evidence and Greg Garner (former Lieutenant over property, has since retired). Gamez said she did not know why those times were there and they are incorrect. Gamez told Yeo the problem was fixed when the department went from LERMS to RMS. When Yeo showed Gamez the times for the property that was checked out in May of 2025, she had no idea as to how it could have happened. That is when Yeo asked Gamez if the property technicians have access and the ability to change the times and dates within the chain of custody. Gamez told Yeo they have administrative rights and can and have changed times on the chain of custody in the system. Gamez continued by saying there have been times when they have changed times to match the officers report.

This made Yeo look deeper into his case and the evidence logs and found that items 103A and 104A showed that they had been destroyed. Yeo showed Gamez that on November 26, 2025, items 103A and 104A showed they had been listed for destruction and should no longer be in the property room. He asked Gamez to check to see if the items were there. The items were still in the property room, and nothing had been destroyed. At this time, it is unknown how or who listed these items as destroyed.

Yeo advised Gamez she might want to notify her supervisor and that this was going to cause a major issue. After Yeo left, he remembered the red and white tape on the package that was in question, so he called Gamez on his way to court. He asked Gamez if Property and Evidence Technicians identify evidence packaging that is falling apart or damaged, do they add additional tape or re-package the item? Gamez said

yes, and that it's a common thing they do. Yeo continued by asking if they initial or document when they have added tape or additional packaging to evidence in the property room and she said they do not.

- Detective Yeo advised the prosecutors involved in this case of the information he had discovered. Since this issue was identified, a temporary hold has been placed on anyone from Goodyear Police Department testifying.

While in trial, Detective Yeo said another issue about property was brought up by the defendant, who stated her phone had been "tethered" sometime in June of 2017. It is unknown what exactly the defendant meant when she stated the phone had been "tethered". Referring to the departments property room entries, there is nothing to show that this phone, item 104 was signed out for any reason, moved or even scanned during the time frame of April of 2017 until October of 2018. It is unknown at this time if the phone has been "tethered".

Detective Yeo has not observed any other issues like this involving property and evidence from any of his other cases.

Summary of interview with Jennifer Calovini (witness):

On January 22, 2026, Internal Affairs Sergeant S. Cannon, #1155 and Lieutenant J. Bayer #1208, conducted an audio recorded interview with Jennifer Calovini in the Internal Affairs office. Jennifer declined to have an employee representative with her. Prior to the interview, Jennifer was issued her Notice of Investigation (NOI) and Garrity rights.

Jennifer Calovini started as an Administrative Services Manager in 2024 in the Goodyear Police Department. While in this position, she oversaw Property and Evidence, Records, Municipal Securities and

Administrative Functions within the Goodyear Police Department. In August of 2025 this position changed to being called the Support Services Manager, but her duties are still the same.

Calovini stated she received a phone call from Chief Issitt the night of January 14th, 2026, who advised her that issues with Detective Yeo's case came to light during his trial. Calovini met with the Chief, Commander Lowe, Lieutenant Hardin, and Detective Yeo to discuss what the issues were the following day. Calovini said she believes the issue is that the property division has procedures that they do, but these procedures are not documented in any Standard Operating Procedure (SOP) or Policy. In other words, they are operating outside of their SOP's. According to Calovini, she could not find anything in any SOP or Policy which gives instructions regarding re-packaging and documenting.

When Calovini was made aware of the issues in this case, she started looking into the back side of the property system entries within the database. Calovini said the audit system shows Gamez as the property officer involved with Yeo's case. There is one item Calovini mentioned that shows Gamez receiving property from Detective Yeo on May 29, 2025, at 0300 hours. The audit logs actually show it being entered by Gamez on May 30, 2025, at 0608 the following morning. This shows that Gamez modified the evidence log for an unknown reason. There is also no supplement report, status notes or any type of documentation by Gamez, that Calovini was able to locate. Calovini added this is the case for several pieces of evidence as if there was a mass update completed by Gamez that was not documented.

This raised the question as to why property and evidence employees can change dates and times to property entries, and why they are not using the scanner. Calovini said she spoke to the other technicians and she was told, using the scanner is not their practice, they are manually entering the property in.

Calovini then raised the issue with the system being used, RMS, that doesn't allow for a bulk release or entry when using the scanner. She stated the scanner will not take the dates and times with a bulk entry, therefore, they must enter the dates and times manually. The items Calovini checked were the same items that were discussed in Detective Yeo's interview which confirmed the discrepancy of the dates and times entries.

Calovini was able to elaborate on the property (Item 104A) that showed it had been destroyed. According to Calovini, item number 104A showed on November 26, 2025, as being destroyed and another entry right after this which said, evidence has been located and was inappropriately marked as destroyed. It is unknown why this is occurring, but Calovini said it does involve the actual system that the Goodyear Police Department is using, which is RMS.

Calovini said since February 13, 2024, which was when the Goodyear Police Department switched from LERMS to RMS, this specific issue of property showing destroyed when it had not has been a re-occurring issue. Calovini re-stated this is a system error and they have also continued to see property showing 0000 hours entry times. Calovini stated the system is logging a "view" of these items as well. This has also occurred in Detective Yeo's case. This shows as "system" in the log, which means it's the system showing a view of the property, and not a specific person. Tyler Technologies has been asked to explain why this is occurring; however it has not been resolved.

Calovini also confirmed that the red and white striped tape was added to item 104 without any documentation anywhere to identify who added the tape. Another piece of evidence that had the red and white striped tape in this case was an envelope with documents. This tape had initials of a former employee,

Casie Phillips, however there is no documentation showing when or why this was done. Calovini said she assumed that the employees in the property division were using the industry standard which requires initialing and documenting changes made to property items stored within the property room. Calovini said she does not know if there were any other issues with Yeo's case other than what Detective Yeo already discussed.

Calovini could only think of one other issue involving property and evidence. In this case, which she did not have a case number for, Gamez checked out two weapons and issued both of them to one individual instead of issuing each of them to two separate individuals. This was a "human error" and Calovini addressed this issue with Gamez.

Calovini advised the property room gets quarterly audits conducted by the internal affairs unit. This audit consists of 25 items from cash, 25 items from guns and 50 items from drugs. The only issues of note that have come up are items being chronologically wrong in the same box or the item being found in another box. The items have always been found. The last formal audit was in 2017. According to Jennifer, the standard time frame for property room audits is every three years and when there is any sort of turnover. For example, when the previous supervisor, Lori Ohrt retired, there should have been a formal audit. The last audit, completed in 2017, only showed issues regarding cameras, adding scanners and maintaining video footage longer than they had. There was no mention of items missing or being packaged incorrectly. Annual inventories occur every year, with the last annual completed in 2022. Currently there is an annual inventory underway.

According to Calovini, the property technicians are required to get their International Association

of Property and Evidence certification within one year of becoming a technician. Calovini does not know if the supervisors over property are required to have any specific training. Calovini said she asked the technicians if they have attended any trainings and they advised her they had not been to much training. Calovini also said the previous supervisor was not big on getting additional training.

It should be noted, Gamez has been the supervisor since the year 2021 and prior to her the supervisor was Lori Orht.

Conclusion:

Based upon the initial fact-finding interviews, it is recommended that further investigation be conducted regarding the Goodyear Police Department, Property and Evidence Unit.

Attachments:

2017 Audit

Policies 1.13, 4.08

SOP 2014, 2010

END OF REPORT

EXHIBIT 2

GOODYEAR POLICE DEPARTMENT

CASE SUPPLEMENT REPORT

175 N 145th Ave

Goodyear, AZ 85338

CASE# **2017-00006390**

EVENT

REPORTED DATE/TIME	OCCURRED INCIDENT TYPE	LOCATION OF OCCURRENCE
01/14/2026 19:03		
OCCURRED FROM DATE/TIME	OCCURRED THRU DATE/TIME	

OFFENSES

	STATUTE/DESCRIPTION	COUNTS	ATTEMPT/COMMIT

SUBJECT

JACKET/SUBJECT TYPE		NAME (LAST, FIRST, MIDDLE SUFFIX)				
DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)				
RACE	SEX	HEIGHT	WEIGHT	HAIR	EYE	
DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3			

SUBJECT

JACKET/SUBJECT TYPE		NAME (LAST, FIRST, MIDDLE SUFFIX)				
DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)				
RACE	SEX	HEIGHT	WEIGHT	HAIR	EYE	
DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3			

SUBJECT

JACKET/SUBJECT TYPE		NAME (LAST, FIRST, MIDDLE SUFFIX)				
DOB	AGE or AGE RANGE	ADDRESS (STREET, CITY, STATE, ZIP)				
RACE	SEX	HEIGHT	WEIGHT	HAIR	EYE	
DL NUMBER/STATE	PRIMARY PHONE	PHONE #2	PHONE #3			

REPORTING OFFICER	DATE	REVIEWED BY
Yeo #1167	01/14/2026	

NARRATIVE

GOODYEAR POLICE DEPARTMENT
SUPPLEMENTAL REPORT
Case Number: 2017-6390
Reporting Detective: Det. N. Yeo #1167
Date: 01/14/2026

On 01/14/2026 at approximately 1645 hours, after trial today I met with prosecutors Joshua Clark and Jessie Wade along with a witness, Lieutenant Ken (unknown last), employed with the Maricopa County Attorney's Office. The meeting was conducted in reference to evidence items in this case and concerns I had involving unexplained and inconsistent timestamps associated with certain evidence items, specifically, item #103 and 104 Germayne and Lisa Cunninghams cellular devices.

I disclosed that, on the evening prior to this meeting, which would have been January 13th, 2026, I was reviewing evidence items #103 and #104 in the Records Management System (RMS) in preparation for court and noticed discrepancies in the recorded times associated with those items. This morning at approximately 0800 hours, I arrived at the Goodyear Police Department evidence facility to try to get clarification from property supervisor Andrea Gamez. As I sat down with Ms. Gamez, I showed her on my mobile data computer under the property tabs for those specific items where there are unexplained times associated with the movement of evidence on those phones within the RMS system, status tab, and in the chain of custody tabs. I noticed there are times of approximately 0100 hours and 0300 hours and according to Ms. Gamez those would be inaccurate as no personnel are present in the property evidence division during those times.

Ms. Gamez explained to me that for several years the department has experienced unexplained timestamp issues resulting from the transition from the New World System to RMS, in that some of those issues persist. As an example, explained that during evidence viewing on May 25th, 2025, a bulk quantity of items was signed out to me by Gamez for viewing/review along with the Maricopa County attorneys and defense attorneys for preparation of trial. I noticed the system reflects two separate release times on the same date, one at approximately 0300 hours and another at approximately 0935 hours. Based on my knowledge, only the later time is accurate. I also notice a similar issue with evidence item #104, which reflects a sign out entry dated March 9th, 2017, at approximately 0100 hours, followed by second entry at the appropriate time 1416 hours when the item was released to me. This appears to create the appearance of two sign outs when in fact only one is accurate. Additionally, I disclosed that Ms. Gamez advised that personnel within property and evidence that have administrative rights have previously adjusted dates and times within the chain of custody records to align with what's documented by the officer's report.

I also inquired about the practice of repackaging or retaping evidence items. Ms. Gamez acknowledged this is a common practice within property and evidence and that it is not a standard practice for personnel to initial evidence packaging when items are retaped. This is done to ensure the item is securely encased in whatever property bag or

NARRATIVE (continuation)

envelope is used.

All of the information above was fully disclosed to the Maricopa County attorney's office.

REPORTING OFFICER	DATE	REVIEWED BY
1167 Yeo	**01/14/2026**	

EXHIBIT 3

Good afternoon,

Please see the response below from Good year PD.

Kirsten Valenzuela

Capital Litigation Bureau Chief

Email: valenzuk@mcao.maricopa.gov

Phone: 602-506-5780

225 W. Madison St, 4th Floor

Phoenix, AZ 85003

http://www.maricopacountyattorney.org

From: Anthony Polse <anthony.polse@goodyearaz.gov>
Sent: Thursday, February 26, 2026 2:55 PM
To: Kirsten Valenzuela (MCAO) <valenzuk@mcao.maricopa.gov>
Cc: Jessi Wade (MCAO) <wadej@mcao.maricopa.gov>; Joshua Clark (MCAO) <clarkj01@mcao.maricopa.gov>
Subject: RE: Cunningham

Hi Kirsten,

Thanks for the email. In terms of the disclosure request, the City is objecting to 1, 3, and 4 as overbroad, not relevant, and a clear fishing expedition. Unless defense counsel can make some showing of good cause as to why that information is needed, the City will not be providing any of that information. With respect to 7-11, the City is conducting a search and will respond with any documents we find that are responsive to that request. Numbers 2, 5, 6, and 11 will be sent over next week.

Regarding the witnesses that the defense wants to interview, Jennifer Calovini, Andrea Gamez and Mark Moncada will be made available at a mutually agreeable time. It would be their preference to conduct the interview via videoconference (Teams, Zoom, WebEx). As to Mr. Whitton, Mr. Garner and Ms. Phillips, they are not current City employees and are not under our control.

We are objecting to Lt. Bayer, Sgt. Cannon, Chief Issitt, Cmdr. Lowe, and Lt. Hardin being interviewed. Their involvement is far outside the scope of any relevant information to the matter involving the Property and Evidence building for the Goodyear Police Department. Again, unless the defense can make some showing of good cause for their relevance, as this also appears to be a discovery fishing expedition, they will not be made available.

The City would also like to note that while the defense request indicates that time is of the essence, the defense created their self-inflicted time emergency as our witnesses we are willing to disclose have been available for interviews since at least January 20, 2026 – the date the City disclosed its first memorandum on the Property and Evidence section.

Please let me know if you have any questions.

Tony

Anthony A. Polse

Assistant City Attorney – Public Safety Legal Advisor

Civil Division / Legal Services Department

City of Goodyear, Arizona

1900 N. Civic Square

Goodyear, AZ 85395

v 623-882-7221

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e anthony.polse@goodyearaz.gov

From: Kirsten Valenzuela (MCAO) <valenzuk@mcao.maricopa.gov>
Sent: Wednesday, February 25, 2026 11:33 AM
To: Anthony Polse <anthony.polse@goodyearaz.gov>
Cc: Jessi Wade (MCAO) <wadej@mcao.maricopa.gov>; Joshua Clark (MCAO) <clarkj01@mcao.maricopa.gov>
Subject: FW: Cunningham

Good morning again Tony,

I understand that you all are looking into the disclosure and the interviews requested. Could we please set the interviews for the IT person Leo Whitten, Ms. Gamez and Ms. Calovini for this Friday in the meantime as we await your response on everything else? As testimony for Det. Yeo rapidly approaches we would really like to move forward with those interviews.

It is my understanding that Casey Phillips does not work there any longer and that you do not have control on whether she will participate in an interview. We will await to hear back from you on everything and everyone else.

Best Regards,

Kirsten Valenzuela

Capital Litigation Bureau Chief

Email: valenzuk@mcao.maricopa.gov

Phone: 602-506-5780

225 W. Madison St, 4th Floor

Phoenix, AZ 85003

http://www.maricopacountyattorney.org

From: Kirsten Valenzuela (MCAO)
Sent: Tuesday, February 24, 2026 10:14 AM
To: Anthony.Polse@GoodyearAZ.gov
Cc: Joshua Clark (MCAO) <clarkj01@mcao.maricopa.gov>; Jessi Wade (MCAO) <wadej@mcao.maricopa.gov>
Subject: Cunningham

Good morning,

Defense Attorney Natalee Seegal for Germayne Cunningham has adopted this attached disclosure request as her own. Can you please review Items 2 and 5-11 and let us know if you have any responsive documents or items? Additionally, please note the list of individuals that they are requesting interviews with. The attorneys on the case are in trial, so any agreed upon interviews would be set during the next two Fridays if at all possible.

Kirsten Valenzuela

Capital Litigation Bureau Chief

Email: valenzuk@mcao.maricopa.gov

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Phoenix, AZ 85003

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EXHIBIT 4

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Sarah N. O'Keefe – 030131
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E-Mail: sno@shieldspetitti.com
E-Mail: docket@shieldspetiti.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Casie Phillips, Plaintiff, v. City of Goodyear; Wynette Reed and John Doe Reed; Santiago Rodriguez and Jane Doe Rodriguez; Jeff Mercy and Jane Doe Mercy; Kevin Allen and Jane Doe Allen; Shealyn Becker and John Doe Becker, Defendants.	No. 2:24-cv-02964-MTL **FIRST AMENDED COMPLAINT**

Plaintiff Casie Phillips ("Plaintiff") for her cause of action against Defendants alleges as follows:

GENERAL ALLEGATIONS

(Parties and Jurisdiction)

1. Plaintiff is a resident of Maricopa County, Arizona and was a resident of Maricopa County during all relevant times.

2. Defendant City of Goodyear ("Defendant Goodyear") is a municipal corporation located in Maricopa County in the State of Arizona. The City of Goodyear Police Department

("Police Department") is an agency of Defendant Goodyear. At all times material herein, Defendant Goodyear was a "person" within the meaning of *42 U.S.C. § 1983*.

3. Defendant Santiago Rodriquez served as an agent of Defendant Goodyear in the position of Police Chief. As such, he was responsible for overseeing the operations and staff of the Police Department and possessed authority to prepare necessary department-specific policies for the Police Department and make final termination decisions of employees. Defendant Rodriquez at all times was acting under the authority of his office and within the scope of his employment, or alternatively, under the authority of his office and outside the course and scope of his authority with knowledge or consent of Defendant Goodyear. Defendant Rodriquez is sued in both his official and individual capacities and is personally liable for violations of law and relief claimed herein. Defendant Rodriquez is a "person" within the meaning of *42 U.S.C. § 1983*.

4. Defendant Jane Doe Rodriquez is the spouse of Defendant Rodriquez and is sued only on behalf of the marital community. Any action taken by Defendant Rodriquez was done for the benefit of the marital community.

5. Defendant Jeff Mercy serves as an agent of Defendant Goodyear in the position of Deputy Chief of Police. As such, he is responsible for overseeing the operations and staff of the Police Department and possesses authority to prepare necessary department-specific policies for the Police Department and makes final recommendations to the Police Chief for discipline and termination of employees. Defendant Mercy at all times was acting under the authority of his office and within the scope of his employment, or alternatively, under the authority of his office and outside the course and scope of his authority with knowledge or consent of Defendant Goodyear. Defendant Mercy is sued in both his official and individual capacities and is personally liable for violations of law and relief claimed herein. Defendant

Mercy is a "person" within the meaning of *42 U.S.C. § 1983*.

6. Defendant Jane Doe Mercy is the spouse of Defendant Mercy and is sued only on behalf of the marital community. Any action taken by Defendant Mercy was done for the benefit of the marital community.

7. Defendant Kevin Allen is the Lieutenant over the Criminal Investigations Division ("CID") with the Police Department. As such, he is responsible for overseeing the operations and staff, including Plaintiff, and possesses authority to implement disciplinary actions, prepare necessary division-specific policies, and make employment decisions relating to employees' terms and conditions of employment. Defendant Allen at all times was acting under the authority of his office and within the scope of his employment, or alternatively, under the authority of his office and outside the course and scope of his authority with knowledge or consent of Defendant Goodyear. Defendant Allen is sued in both his official and individual capacities and is personally liable for the violations of law and relief claimed herein. Defendant Allen is a "person" within the meaning of *42 U.S.C. § 1983*.

8. Defendant Jane Doe Allen is the spouse of Defendant Allen and is sued only on behalf of the marital community. Any action taken by Defendant Allen was done for the benefit of the marital community.

9. Defendant Shealyn Becker is employed by Defendant Goodyear and is the Human Resources Business Partner for the Police Department. As such, and as relevant here, she was responsible for implementing and directing Human Resources policy, managing and resolving employee complaints, performance management, and conducting investigations and trainings. Defendant Becker at all times was acting under the authority of her office and within the scope of her employment, or alternatively, under the authority of her office and outside the course and scope of her authority with knowledge or consent of Defendant Goodyear. Defendant

Becker is sued in both her official and individual capacities and is personally liable for the violations of law and relief claimed herein. Defendant Becker is a "person" within the meaning of *42 U.S.C. § 1983*.

10. Defendant John Doe Becker is the spouse of Defendant Becker and is sued only on behalf of the marital community. Any action taken by Defendant Becker was done for the benefit of the marital community.

11. At all material times herein, Defendant Wynette Reed ("Defendant Reed") serves as City Manager for Defendant Goodyear. As such, she is responsible for implementing, communicating and enforcing all City-wide employee policies, including policies related to discipline and termination of employees. In addition, Defendant Reed approves or makes final termination decisions. Defendant Reed at all times was acting under the authority of her office and within the scope of her employment, or alternatively, under the authority of her office and outside the course and scope of her authority with knowledge or consent of Defendant Goodyear. Defendant Reed is sued in both her official and individual capacities and is personally liable for the violations of law and relief claimed herein. Defendant Reed is a "person" within the meaning of *42 U.S.C. § 1983*.

12. Defendant John Doe Reed is the spouse of Defendant Reed and is sued only on behalf of the marital community. Any action taken by Defendant Reed was done for the benefit of the marital community.

13. Defendants have committed actions and caused events to occur in the County of Maricopa, State of Arizona, which are the foundation of this action and out of which this action arises. Accordingly, jurisdiction and venue are proper in this Court.

(Nature of Action)

14. This is an action brought by Plaintiff to vindicate violations of Arizona's

Employment Protection Act, *A.R.S. § 23-1501*; *42 U.S.C. § 1983* and Title VII. Plaintiff's Complaint also includes a Special Action review and request for relief by virtue of *Article VI, Section 18* of the Arizona Constitution and *Rule 4*, Rules of Procedure for Special Action.

15. This Court has jurisdiction over this action pursuant to *28 U.S.C. § 1331* because this is a civil action arising under the laws of the United States.

16. Venue is proper in the District of Arizona because Defendants conduct business in the judicial district and events giving rise to the claims occurred within this judicial district. *28 U.S.C. § 1391(b)*.

(Jury Demand)

17. Pursuant to *Rule 38* of the *Federal Rules of Civil Procedure*, Plaintiff demands a jury trial.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

18. In March of 2020, Plaintiff began working for Defendant Goodyear's Police Department as a Crime Scene Specialist ("CSS") within Criminal Investigations Division ("CID").

19. As of November of 2021, Plaintiff's supervisor resigned and, as a result, Plaintiff was the only Crime Scene employee in Defendant Goodyear's Police Department.

20. In or about March of 2022, Plaintiff was promoted to Crime Scene Supervisor for the Crime Scene Unit within CID. As such, Plaintiff was responsible for operating the Crime Scene Unit.

21. Plaintiff asked Defendants Mercy and Becker for new supervisor training, but no such training was provided.

22. The Police Department hired two new CSSs, who Plaintiff was responsible for training and onboarding.

23. Plaintiff raised concerns that there was no training program for newly hired CSSs and began working on creating such a program.

24. Plaintiff expressed concern to Defendant Becker and CID Lieutenant Scott Benson about the potential liability for having more than one trainee at a time, given that Plaintiff would be responsible for training both new hires in a to-be-determined training program, while working crime scenes for Defendant Goodyear and neighboring agencies, conducting in-house lab processing for evidence, and running the daily operations of the Crime Scene Unit.

25. On or about September of 2022, Defendant Allen became responsible for the CID in Defendant Goodyear's Police Department.

26. With Defendant Allen in charge of CID, Plaintiff began experiencing hostile and discriminatory treatment based on her gender (female). For example, Defendant Allen excluded Plaintiff from relevant trainings and ignored her emails. He routinely refused to meet with Plaintiff or provide clarity regarding the expectations for her job, which she had repeatedly requested. Additionally, despite Plaintiff raising concerns, Defendant Allen refused to act until a male employee raised the issue with him.

27. Plaintiff also expressed concerns regarding the Police Department's handling of evidence. Specifically, Plaintiff raised concerns that the Property and Evidence Department, led by Andrea Gamez ("Gamez"), lacked a reliable way to track which evidence had been test fired or entered into the National Integrated Ballistic Information Network ("NIBIN") database. Plaintiff also expressed concerns that the Police Department was losing valuable evidence by releasing firearms without first test-firing them or entering them into NIBIN.

28. Around three (3) months into his CSS training, one of Plaintiff's trainees was still struggling to progress. As a result, he received a substandard review. In response, the trainee

resigned and accused Plaintiff of discrimination.

29. Upon information and belief, the trainee filed a Charge of Discrimination.

30. Defendant Goodyear conducted an investigation and found the trainee's allegations were unsubstantiated. Nevertheless, Defendant Allen disciplined Plaintiff with a counseling statement in January of 2023.

31. In February of 2023, Plaintiff expressed concern to Defendants Allen, Mercy, and Becker about potential liability for releasing an insufficiently trained CSS to work alone on investigations.

32. In March of 2023, Defendant Allen presented Plaintiff with a specific training guideline that stated the remaining trainee was to be released to work alone on May 16, 2023.

33. The training guideline was created by Defendants Allen and Mercy and lacked the input of forensic personnel although Plaintiff and Forensic Supervisors from other agencies advised Defendant Allen of the recommended training requirements for a new CSS. The guideline Defendants Allen and Mercy created was contrary to the industry's standard and disregarded the trainee's competency level.

34. Despite repeatedly expressing concerns that the trainee was not ready to be released into the field without further training and a sufficient observation period, Defendant Allen released the trainee. Plaintiff cautioned him against this and explained potential detrimental effects of rushing to release the trainee.

35. Defendant Allen repeatedly called three (3) similarly situated male employees "my three kings."

36. On or about March 29, 2023, Plaintiff reported to Defendant Becker in Human Resources that Defendant Allen was treating her differently as compared to similarly situated males and retaliating against her.

37. Plaintiff also told Defendant Allen directly about his discriminatory behavior.

38. On or about March 30, 2023, Defendant Allen gave Plaintiff a negative annual performance review that included a Performance Expectation Plan ("PEP").

39. Plaintiff's annual performance review deviated from Defendants' policies, lacked facts and objectivity, omitted positive feedback, and minimized Plaintiff's accomplishments. The PEP contained falsities and included goals Plaintiff had already completed.

40. Plaintiff met with Defendant Mercy regarding the annual review and PEP, as well as the biased, disrespectful, and hostile way that Defendant Allen treated her. Plaintiff also expressed fear that she would lose her job because of Defendant Allen's continued behavior.

41. Defendant Allen continued to treat Plaintiff differently than similarly situated males, including making comments intended to harm her reputation, refusing her requests for job expectations and meetings, omitting positive achievements in Plaintiff's performance evaluations and other documents and communications relating to her performance, and withholding the tools and information necessary for Plaintiff to perform her job duties.

42. Plaintiff also told Deputy Chief David Farrow in June of 2023 that Defendant Allen was discriminating against her. Deputy Chief David Farrow passed along Plaintiff's concerns to Defendant Rodriguez, who refused to meet with Plaintiff, despite her request.

43. On or about June 28, 2023, Defendants Rodriguez and Allen, and Human Resources representative Sabrina Deszo told Plaintiff that she did not successfully pass the PEP; and as a result, she would no longer be a supervisor. Plaintiff was given the choice to "self-demote" or end her employment. Plaintiff chose demotion.

44. Plaintiff was told based on these circumstances and applicable policies that she could submit a grievance about the demotion, which she did. Plaintiff was later informed by the Defendant Goodyear that it was "not a grievance topic."

45. Around July of 2023, Plaintiff shared her concerns with Defendant Rodriguez that Defendant Allen was discriminating against her, as well as her previously raised concerns.

46. Soon after the demotion, on or about August of 2023, a coworker accused Plaintiff of verbal sexual harassment. The allegations were baseless, and Defendants' investigation was biased and omitted relevant facts. Defendant Goodyear used the employee's false claims to move Plaintiff into the CID workspace with Defendant Allen, whom she stated she felt unsafe around.

47. In August of 2023, Plaintiff submitted a request for Family Medical Leave Act ("FMLA") leave through her cardiologist for her own serious medical condition.

48. On October 5, 2023, Plaintiff was called into a meeting with Defendant Mercy and Human Resources' Sabrina Deszo. Defendant Mercy handed Plaintiff a Notice of Recommendation to Terminate. They informed Plaintiff that she was being placed on Administrative Leave.

49. On October 9, 2023, Plaintiff spoke with Defendant Reed regarding her concerns, including sex discrimination, retaliation, and her concerns regarding gross mismanagement.

50. On October 31, 2023, Chief Rodriguez fired Plaintiff.

51. The termination letter regarding Plaintiff contained various inaccuracies, including Plaintiff's job title.

52. Plaintiff exercised her administrative rights to appeal the termination decision to a third-party hearing officer. Plaintiff was given ten days to secure an attorney for the hearing and was told that if she could not secure counsel within that time, then she would forfeit her right to be represented by counsel. Unable to secure counsel, Plaintiff represented herself. Defendant Allen refused to appear at the hearing, which violated Police Department policy. The hearing officer upheld the termination, but his findings were based on inaccurate

information provided by Defendants.

53. In discharging Plaintiff, Defendants discriminated against her because of her sex and good faith concerns regarding Defendants' gross mismanagement, discrimination, and complaints that Defendants were violating or may violate state law and her opposition to the same. Defendants stated reasons for their actions were false and pretextual.

54. After terminating Plaintiff, the Police Department voluntarily submitted materials to the Maricopa County Attorney's Office for inclusion on the Brady List. The submission was not warranted and was an act of retaliation.

55. Plaintiff timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"). The EEOC issued its Notice of Right to Sue thereafter. (Exhibit 1)

56. Plaintiff is damaged by the wrongful acts of Defendants and its agents as herein alleged, which damage includes, without limitation, the following:

a. Lost salary and employment benefits due to Plaintiff from the time of her demotion and termination until she should obtain employment at a similar rate of compensation and future lost earnings;

b. Injury to Plaintiff's long-term employment, reputation and income potential flowing from the wrongful conduct by Defendants; and

c. Injury from humiliation, trauma, extreme stress, depression and physical and mental pain and anguish.

57. The willful and wanton misconduct on the part of Defendants is such that it justifies an award of punitive damages.

58. All prerequisites to Plaintiff filing suit have been met.

59. All allegations of this Complaint are incorporated into each Claim for Relief in

this Complaint.

FIRST CLAIM FOR RELIEF

(Statutory Wrongful Discharge in Violation of Public Policy)
(Against Defendant Goodyear)

60. Plaintiff was wrongfully discharged in violation of the public policy of the State of Arizona after Plaintiff raised several good faith concerns, including conduct that she reasonably believed violated or may violate state law.

61. Defendant's conduct, as outlined above, violates or implicates Arizona law, including but not limited to *A.R.S. §§ 41-1750, 41-1758 et. seq., 41-1762, 41-1803, 41-1771, 41-1772.*

62. As a direct, foreseeable, and proximate result of Defendants' unlawful conduct, Plaintiff has suffered, and continues to suffer, economic injury, mental and emotional distress, humiliation, anxiety, embarrassment, discomfort, and other injuries and irreparable harm.

63. Defendants' willful and wanton misconduct is so great that it justifies an award of punitive damages.

64. Plaintiff is damaged by Defendants' willful violation of public policy as hereinabove alleged or as proven at trial.

SECOND CLAIM FOR RELIEF

(*42 U.S.C. § 1983* - Violation of First Amendment Right to Free Speech)
(Against Defendants Goodyear, Reed, Rodriguez, Mercy, Allen, and Becker)

65. The right of Plaintiff to speak freely about matters of public concern is protected by the First Amendment of the U.S. Constitution. The public has a vital interest in free and open discussions on issues of public importance.

66. It is a violation of the First Amendment of the U.S. Constitution for public employers to discriminate against, discipline, or discharge its employees in retaliation for engaging in speech about matters of public concern as private citizens. Plaintiff's speech regarding legitimate, good faith concerns about Defendant Allen's discrimination and the City's gross mismanagement, discrimination, and potential violations of law was about matters of public concern.

67. Plaintiff's speech on these matters was made not as a public employee, but rather as a private citizen.

68. Defendants discriminated against and ultimately discharged Plaintiff in retaliation for engaging in the above-described protected speech activity.

69. Through this conduct, Defendants retaliated against Plaintiff in violation of the First Amendment of the U.S. Constitution. Defendants' conduct unlawfully chills free and open discussions on issues of public importance and intimidates other Police Department employees and members of the community from similarly engaging in protected speech.

70. In disciplining Plaintiff and retaliatorily terminating Plaintiff's employment, Defendants acted under color of State law, as defined in *42 U.S.C. § 1983*. Defendants' actions were unprivileged and not subject to any immunity.

71. The decision to discipline and terminate Plaintiff's employment in retaliation for her protected First Amendment speech activity was made pursuant to Defendants' policy and/or practice and without regard to whether such actions would otherwise violate an employee's constitutional or other guaranteed rights.

72. Further, Defendants acted jointly to discipline and terminate Plaintiff's employment. Defendants possess the authority to direct, prepare, and review and necessary department-specific policies for the Police Department.

73. Accordingly, Defendants are final policymakers for Defendant Goodyear's policies with respect to the termination of Plaintiff.

74. Such conduct by Defendants was done in a knowing, willful, wanton, reckless, and bad faith manner, which violates clearly established constitutional provisions and rights which a reasonable person would have known.

75. As a direct, foreseeable and proximate result of Defendants' unlawful conduct, Plaintiff has suffered, and continues to suffer, economic injury, mental and emotional distress, humiliation, anxiety embarrassment, discomfort, other injuries, and irreparable harm.

76. Plaintiff is damaged by Defendants' actions as hereinabove alleged or as proven at trial.

THIRD CAUSE OF ACTION

(Special Action Appeal)
(Against Defendants Goodyear and Reed)

77. Defendants' final decision to terminate Plaintiff was founded on or contained errors of law. Defendants' decision was also unsupported by sufficient evidence and Defendant Reed's final decision is arbitrary and capricious and an abuse of discretion.

78. Defendants' decision was also disproportionate to Plaintiff's alleged offense so as to be shocking to one's sense of fairness.

FOURTH CAUSE OF ACTION

(Sex/Retaliation Discrimination)
(Against Defendant Goodyear)

79. Plaintiff is a member of a protected class (female). Defendant treated Plaintiff differently than similarly situated male employees in the terms and conditions of their employment, including performance, discipline and discharge.

80. Plaintiff raised concerns about this different treatment with Defendant as set forth herein and experienced ongoing retaliation.

81. Plaintiff timely filed a charge of sex discrimination. The EEOC issued its Notice of Right to Sue thereafter. (Exhibit 1)

82. Plaintiff is damaged by Defendant's violations of Title VII as hereinabove alleged or as proven at trial.

WHEREFORE, Plaintiff requests judgment in her favor and against Defendants as follows:

A. For all injunctive and declaratory relief necessary, including a declaration that Defendants' conduct violated *A.R.S. § 23-1501, 42 U.S.C. § 1983 and Title VII*, and enjoining Defendants from conduct violating Plaintiff's rights;

B. For actual, consequential and incidental damages as alleged herein or as determined at trial;

C. For punitive damages;

D. For Plaintiff's attorneys' fees and costs incurred in this matter pursuant to *42 U.S.C. § 1988*, Title VII and any other applicable statute, rule or regulation;

E. For interest on each such element of damage, costs, or attorneys' fees at the highest legal rate from the date such damage, cost, or attorneys' fees was incurred until paid; and

F. For such other and further relief as the Court deems just and proper.

DATED this 14th day of July, 2025.

SHIELDS PETITTI & ZOLDAN, PLC

By /s/ Michael J. Petitti, Jr.
Michael J. Petitti, Jr.
Sarah N. O'Keefe
5090 N. 40th Street, Suite 207
Phoenix, Arizona 85018
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2025, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic filing to the following CM/ECF registrants:

Dominic Verstegen
PIERCE COLEMAN PLLC
17851 N. 85th Street, Suite 175
Scottsdale, AZ 85255
Attorneys for Defendant

By: /s/Lisa Rustenburg

EXHIBIT 5

Benita Hogue (MCAO)

From:	Joshua Clark (MCAO)
Sent:	Monday, February 23, 2026 1:02 PM
To:	Benita Hogue (MCAO)
Cc:	Jessi Wade (MCAO)
Subject:	Disclosure related to Goodyear Audit RE: Cunningham
Attachments:	Casie Phillips federal complaint.pdf

Hey Benita,
In reviewing the information regarding the Goodyear audit we received, I noticed that a Casie Phillips is listed as terminated by Goodyear PD. I googled Casie Phillips and there is a lawsuit filed in Federal District Court on behalf of Casie Phillips against Goodyear PD by a Michael Pettiti. I have a family member that works for that firm and has worked on that case. Attached is a copy of the Federal complaint I was able to pull off of Pacer. Can you please Bates stamp and disclose this complaint along with this email and send to both teams? Thank you

Joshua Clark, Deputy County Attorney
Maricopa County Attorney's Office
Special Prosecution Division I
602-506-5780

EXHIBIT 6

State ex rel. Polk v. Hancock

Court of Appeals of Arizona, Division One

October 21, 2014, Filed

No. 1 CA-SA 14-0181

Reporter
2014 Ariz. App. Unpub. LEXIS 1256 *

STATE OF ARIZONA, ex rel., SHEILA SULLIVAN POLK, Yavapai County Attorney, Petitioner, v. THE HONORABLE CELE HANCOCK, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of YAVAPAI, Respondent Judge, SAVARIO D. SPICER, Real Party in Interest.

Prior History: **[*1]** Appeal from the Superior Court in Yavapai County. No. P1300CR201300625. The Honorable Cele Hancock, Judge.

Disposition: JURISDICTION ACCEPTED; RELIEF GRANTED.

Core Terms

chain of custody, contraband, tampering, trial court, authentic, grant relief, pre-trial, informant's testimony, present evidence, offer of proof, actual change, informant, suggests, goes

Counsel: For Petitioner: Dennis M. McGrane, Yavapai County Attorney's Office, Prescott.

For Real Party in Interest: C. Kenneth Ray, C. Kenneth Ray, II, PC, Prescott.

Judges: Presiding Judge Patricia A. Orozco delivered the decision of the Court, in which Judge Randall M. Howe and Judge Maurice Portley joined.

Opinion by: OROZCO

Opinion

DECISION ORDER

OROZCO, Judge:

P1 The State petitions for special action relief from a trial court order precluding alleged contraband from evidence. Because the State established a chain of custody sufficient to present the evidence to a jury, we accept special action jurisdiction and grant relief.

P2 Real Party in Interest Savario Spicer is charged with several counts alleging the possession, transportation, and sale of illegal drugs and drug paraphernalia. Before trial, Spicer moved to preclude "all items of alleged contraband" because, he claimed, the State failed to timely disclose "documents purporting to be the Property and Evidence Invoices/Receipts for the evidence the State intends to offer at [t]rial." Furthermore, Spicer argued the late disclosure gave **[*2]** him "insufficient time" to "address the foundational 'chain-of-custody' issues disclosed."

P3 The trial court reset the trial date and held a hearing to address Spicer's motion. The State presented evidence that the alleged contraband was and likely remained in State custody, including copies of the Yavapai County Sherriff's Office (YCSO) "Property Invoice/Receipts," testimony from the YCSO case agent and testimony from a deputy who took the evidence from the case agent and stored it in a YCSO facility. The trial court then granted Spicer's motion, noting that "[t]he real problem I'm having is we don't have the evidence here. We don't have the end of the chain of custody." The trial court further stated, "I think that [chain of custody] goes to weight, if you have the beginning and the end, but we don't have the end." The State's motion for reconsideration was denied, with the trial court's minute entry stating that "[t]he Court notes that the State still has not provided evidence regarding where the contraband is, or whether or not it has been tampered [with], or whether or not the contraband actually exists."

P4 This special action followed from the trial court's ruling. We accept jurisdiction **[*3]** because the State has no equally plain, speedy, or adequate appellate remedy. *See* Ariz. R.P. Spec. Actions 1(a); *State ex rel. Romley v. Fields, 201 Ariz. 321, 323, ¶ 4, 35 P.3d 82, 84 (App. 2001)*. We have jurisdiction pursuant to *Article 6, Section 9 of the Arizona Constitution* and Rule of Procedure for Special Action 4(a) and (b).

P5 We grant relief because concerns or problems with the chain of custody go to the weight of evidence and not admissibility. *State v. McCray, 218 Ariz. 252, 256-57, ¶¶ 8-15, 183 P.3d 503, 507-08 (2008)*. Authenticating evidence by establishing chain of custody requires showing "continuity of possession," and such a showing "need not disprove 'every remote possibility of tampering.'" *State v. Spears, 184 Ariz. 277, 287, 908 P.2d 1062, 1072 (1996)* (quoting *State v. Hardy, 112 Ariz. 205, 207, 540 P.2d 677, 679 (1975)*). The Arizona Supreme Court in *State v. Ritchey* observed that, in addressing a chain of custody challenge, "notwithstanding the inability of the state to show a continuous chain of custody . . . unless a defendant can offer proof of actual change in evidence, or show that the evidence has, indeed, been tampered with, such evidence will be admissible." *107 Ariz. 552, 557, 490 P.2d 558, 563 (1971)*.

P6 The trial court correctly noted that chain of custody "goes to [the] weight" of evidence, but it overstated the State's burden for establishing an admissible chain of custody. It was not necessary that every person who "had an opportunity to come in contact with the evidence" testify, and evidence may be admitted when a party offers proof that "strongly suggests the exact whereabouts of the **[*4]** exhibit at all times, and which suggests no possibility of substitution or tampering." *State v. Hurles, 185 Ariz. 199, 206, 914 P.2d 1291, 1298 (1996)* (internal citations and quotations omitted). Moreover, the trial court "does not determine whether the evidence is authentic, but only whether evidence exists from which the jury could reasonably conclude that it is authentic." *State v. Lavers, 168 Ariz. 376, 386, 814 P.2d 333, 343 (1991)*.

P7 Although Spicer attacked the validity of the evidence's chain of custody, he offered no proof of an actual change in evidence, and he likewise did not show that the State had tampered with the evidence. Spicer's response to the special action petition concentrates on the lack of testimony at the evidentiary hearing by a State informant. The informant's testimony is allegedly the link between the contraband and Spicer that the State must establish to prove Spicer committed the charged offenses. However, the lack of pre-trial testimony by this informant cannot carry the same weight as would a lack of trial testimony. As with the location of the contraband, the informant's testimony, or lack thereof, may constitute a problem with the evidence's chain of custody that Spicer can explore for the jury's benefit at trial. But these are questions of the evidence's weight, not **[*5]** admissibility. Regardless whether proof of a change in or tampering is offered pre-trial or during trial, the defendant bears the burden of showing a change in or tampering with evidence. *See Ritchey, 107 Ariz. at 557, 490 P.2d 563*. On this record, Spicer has not met this burden.

P8 The chain of custody established in the pre-trial hearing is sufficient to authenticate the contraband evidence for presentation to a jury. Accordingly, we accept jurisdiction of this special action, grant relief, lift the stay, and remand for further proceedings consistent with this order.

EXHIBIT 7

Clerk of the Superior Court
*** Electronically Filed ***
07/15/2021 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-001324-001 DT 07/12/2021

HONORABLE KATHERINE COOPER

CLERK OF THE COURT
N. Pallas
Deputy

STATE OF ARIZONA

JOHN NELSON SCHNEIDER
ALLISTER R ADEL

v.

PATRICK JAY SANFORD (001)

JEREMY HUSS

JUDGE COOPER

ERIC AIKEN

RULING RE: MOTION TO DISMISS

The Court has reviewed Defendant's Motion to Dismiss filed 3/19/2021, the State's Response filed 4/16/2021, the Reply filed 5/7/2021, the State's Motion to Strike Defendant's Reply filed 5/17/2021, pertinent portions of the record, and additional pleadings referenced. The Court also considers counsels' oral argument on 5/28/2021.

Defendant moves to dismiss the indictment pursuant to the Double Jeopardy Clause of the Fifth Amendment and the Arizona Constitution based on prosecutorial misconduct on the following grounds: 1) the State obtained the indictment with perjured testimony; 2) the State failed to disclose *Brady* impeachment evidence regarding its lead witness, Det. Cristie Eisentraut; and 3) the State presented false expert testimony at trial.

Evidence Presented at Trial

This case arises from the 2011 death of Denise Smith. On April 16, 2011, Smith's ex-husband Brian Smith found her dead in her second floor bedroom with a gunshot to her chest, the gun beside her. Denise had a several-year history of medical and mental health issues. At the time of her death, she suffered from depression, anxiety, chronic pain, and suicidal ideation. She and Brian had divorced after a long marriage. They had two adult sons.

On April 6, 2011, ten days before her ex-husband found her dead, Smith attempted suicide. She went to a pawnshop to buy a gun. A mandatory wait period prevented her from buying it that day. She returned to her home and took a large quantity (50 pills) of her pain medication. She left a suicide note for her sons with information about her bank accounts. Her son Aaron found her, and she was admitted to St. Luke's Hospital from April 6 to April 12, 2011.

On April 12, 2011, St. Luke's released her to ex-husband Brian's care. In the car leaving the hospital with Brian she said that she was angry that she was still alive. Two days later, on April 14, 2011, she returned to the pawnshop and bought the gun. She told Brian that she had the gun but would not use it on herself because she had test-fired it and it was loud. Between April 12 and April 14, 2011, she talked about committing suicide by electricity with her ex-husband and expressed suicidal thoughts to her counselor.

Smith and Sanford met online in the year before her death. They dated and lived together at her two-story town home from approximately November 2010 to March 2011 when the relationship ended. On April 15, 2011, she contacted Defendant. She told a friend she was excited to see him. Sanford told police that he picked her up, they went to his residence where they spent the night, and he dropped her off at her town home around 10:30 a.m. the next morning on April 16, 2011. [1] Later that day Smith did not return her sons' calls or texts. They and Brian became concerned that Smith had harmed herself, so Brian went to her home where he found Smith deceased. He called 911 and reported that his ex-wife had committed suicide. City of Phoenix police treated the death as a suicide.

Det. Eisentraut responded to the call at Smith's home that night and undertook an investigation. She ordered forensic testing, talked to Smith's friends and family, interviewed Sanford, and enlisted experts. In 2012, forensic testing revealed Smith's DNA and the Y-STR DNA of four males, including Defendant, on the gun. Following those lab results, Eisentraut sent evolving summaries of her investigation to the Phoenix Crime Lab and MCAO. Two months before trial, Eisentraut took a leave of absence. The Police Department removed her as the case agent and sent a letter to defense counsel stating that her leave was not "related to any misconduct investigation or integrity issue." (Exh. J to Motion to Dismiss.)

In 2017, six years after Smith's death, the State charged Defendant with Second Degree Murder on the theory that Defendant killed Denise because he was upset about their break-up.

[1] Defendant's presence in Smith's home on April 16, 2011 was a material issue. The State asserted that Smith and Sanford spent the night at her residence on April 15 and therefore he was in Smith's home on April 16.

Eisentraut testified as the State's sole witness at the grand jury proceeding. Trial began November 2019 and with a mistrial after the jury deadlocked. Re-trial is set for August 2021.

Double Jeopardy and Prosecutorial Misconduct

Defendant contends that the State's misconduct in this case bars re-prosecution under the Double Jeopardy Clause of the Fifth Amendment and Arizona Constitution, Art. 2, Section 10. Whether double jeopardy bars a retrial is a question of law for the court. *State v. Moody*, 208 Ariz. 424, 94 P.3d 1119 (2004).

The Double Jeopardy Clause protects a defendant from multiple prosecutions for the same offense. Article 2, Section 10 of the Arizona Constitution states that no person shall be "twice put in jeopardy for the same offense." The Clause also "protects a defendant from multiple attempts by the government, with its vast resources, 'to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity'…" *State v. Minnitt*, 203 Ariz. 431, 437, 55 P.3d 774, 780 (2002) (quoting *Green v. United States,* 355 U.S. 184, 187 (1957)*).*

The Clause bars re-prosecution when there is "[i]ntentional and pervasive misconduct on the part of the prosecution to the extent that the trial is structurally impaired." *Minnitt*, 203 Ariz. at 438. The misconduct need not result in a mistrial, but must be "so egregious that it raises concerns over the integrity and fundamental fairness of the trial itself." *Id.* Instances of prosecutorial misconduct may be viewed cumulatively in determining the overall fairness of the trial and whether reversal is required. *State v. Roque*, 213 Ariz. 193, 230, 141 P.3d 368, 405 (2006); *State* v. Vargas, 249 Ariz. 186, 468 P.3d 739 (2020).

Prosecutorial misconduct is not, as the State alleges,[2] limited to acts or omissions by the prosecutor. It includes misconduct by law enforcement personnel who are part of the prosecution team.[3] In *Milke v. Mroz,* 236 Ariz. 276, 339 P.3d 659, the Court of Appeals rejected the State's argument that prosecutorial misconduct had not occurred because the prosecutor did not know about the police misconduct, stating:

[2] State's Response to Motion to Dismiss, 4/16/21, p. 2.

[3] The State also argues a witness' inconsistent statements do not constitute perjury citing *State v. Patterson*, 4 Ariz. App. 265, 266 (1966). Response at p. 3. *Patterson* is inopposite because Defendant does not claim Eisentraut gave inconsistent statement. He contends that Eisentraut presented false information regarding Defendant's statement, a witness statement, and other evidence discussed herein.

> The extent of any individual prosecutor's knowledge of the misconduct is immaterial. Though in some cases an individual may be the focus of the inquiry, it is the duty of the State as a whole to conduct prosecutions honorably and in compliance with the law.

Id. at 283.

The prosecution is one team. Information known to the law enforcement agency on which the case relies is imputed to the prosecutor. *Milke*, 236 Ariz. at 282 (internal citation omitted). The prosecutor's office cannot "keep[ing] itself in ignorance by compartmentalizing information about different aspects of a case." *State v. Lukezic*, 143 Ariz. 60, 67, 691 P.2d 1088, 1096 (1984). As the *Minnitt* court stated, the focus of the inquiry is the "[i]ntentional and pervasive misconduct on the part of **the prosecution**." *Minnitt*, 203 at 438 (emphasis added).

The Misconduct at the Grand Jury

Defendant contends that the State obtained an indictment with false information in four respects: 1) Eisentraut falsely stated that Defendant said he went inside Smith's home for half an hour on April 16, 2011 (the day she died), 2) Eisentraut falsely told the grand jury that Defendant had pushed Smith down the stairs, 3) Eisentraut and the prosecutor presented false testimony about DNA transfer, a forensic issue, and 4) Eisentraut falsely stated that the toilet seat was up in the master bathroom on April 16, 2011 to show that Defendant had been upstairs in the home where Smith was found.

The trial court may dismiss an indictment based in part on evidence that the State knew or should have known was not true. In *State v. Moody*, 208 Ariz. 424, 440 (2004), the Arizona Supreme Court stated:

> In *Basurto*, the Ninth Circuit held that due process is violated if the government bases an indictment "partially on perjured testimony, when the perjured testimony is material, and when jeopardy has not attached."

Moody at 440, citing *United States v. Basurto*, 497 F.2d 781 (9th Cir. 1974). Perjury is a '"false sworn statement [a witness makes regarding] a material issue, believing [the statement] to be false." *Id.* citing A.R.S. §14-2702(A)(1). A statement is material if it could have affected the course or outcome of a proceeding. *Id.*

The defendant in *Moody*, like Defendant Sanford here, faced a re-trial. He filed a motion to dismiss based in part on a claim that the State knowingly obtained the indictment with false evidence. The trial court denied the motion, and Moody appealed directly to the Arizona Supreme Court. It held the court may review an indictment post-trial as to perjured, material testimony "when a defendant has had to stand trial on an indictment which the government knew

was based partially on perjured, material testimony " *Id.* (citations omitted). In addressing Moody's motion, the *Moody* court then evaluated each alleged perjured statement to determine whether to dismiss the indictment.

The State contends that Defendant waived arguments related to the grand jury proceeding because Defendant did not file a motion to remand the indictment or special action before trial. The *Moody* court addressed this issue. Pursuant to *Moody,* Sanford's claim is timely. Jeopardy has not attached. Therefore, this court may review the indictment for perjured, material testimony at grand jury.

1. Defendant's Recorded Statement – Never entered the home.

Defendant's first claim is that Eisentraut told the grand jury that Defendant told her that he entered Smith's home for "a half an hour or so" on April 16, 2011. That testimony was false. In fact, Sanford told Eisentraut unequivocally, and multiple times, that he did **not** enter the home that day.

On March 2, 2017, a member of the grand jury asked Eisentraut:

> GJ: Did [Mr. Sanford] say that he went into Denise's residence that morning when he dropped her off?
>
> A: Yes.
>
> GJ: And how long did he stay?
>
> A: Whenever I asked him, **he couldn't give me anything more than approximately a half an hour or so.** Enough to drop her off, give her a kiss goodbye, tell her he was going to see her that night.

(GJ Transcript, Exh. A to Motion to Dismiss, p. 59, ll 1-6, emphasis added.)

However, Sanford repeatedly told Eisentraut that he did **not** go in Smith's home that morning. In a recorded interview on April 14, 2014, Defendant told Eisentraut:

> Eisentraut: Okay and then you said you didn't even go inside?
>
> Sanford: Her house, no, huh-uh. Huh-uh.
>
> Eisentraut: Ok. So didn't even go inside…
>
> Sanford: **No**.
>
> Eisentraut: …her house that morning?

> Sanford: Got in my car and she came over and kissed me in the door and I backed out…It was just a matter of dropping her off, getting in my car, and coming home and **no, I did not go inside the house.**

(Transcript of 4/14/2014 Interview, Exh. B to Motion, p. 22, ll. 959-971 emphasis added.)

Later in the same interview, Kyle Eisentraut, Det. Eisentraut's husband, also a City of Phoenix police officer, questioned Defendant who stated:

> K. Eisentraut: Why did you tie her up?[4]
>
> Sanford: I didn't. **I wasn't in the house**, don't even know what you're talking about.
>
> K. Eisentraut: Yes you were.
>
> Sanford: No.
>
> K. Eisentraut: Your DNA tells me you were in the house.
>
> Sanford: That's impossible.

(*Id.* at 2014 Int. Tr., Exh. B, p. 63, ll. 2801-2812.)

> K. Eisentraut: Why do you keep with this story of I didn't go in the house when we can prove you did? You bet…need to come up with a better lie.
>
> Sanford: It was the night before I did, on Friday night. **Saturday morning, no sir.**

(*Id.* at 2014 Int.Tr., Exh. B, p. 63, ll. 2839-2842, emphasis added.)

Eisentraut knew that her statement was false. First, Defendant told her and her officer husband four times that he did not enter the home that morning. Second, her language was intentional. She did not say "he went inside" by mistake. She specifically attributed a statement to Sanford, stating, **"he couldn't give me anything more than approximately a half an hour or so."**

Eisentraut's statement was material. The grand juror's question itself establishes that whether or not Defendant entered the home on April 16 was a determinative issue for the grand jury. The physical evidence showed that the gun fired and Denise died in the upstairs bedroom on April 16, 2011. Therefore, whether Defendant entered the home that day was an important and disputed fact in the case. As case agent, Eisentraut knew that police had no direct evidence that Sanford entered the home that day. By placing him in the home that day, Eisentraut filled

[4] Smith was not tied up when found nor was there any evidence presented at trial that she was ever tied up.

that gap in the State's case and made it more likely that the grand jury would find probable cause that Defendant murdered her by shooting her. By stating the false fact as Defendant's words ("he couldn't give me…"), Eisentraut made her false testimony more persuasive.

The State does not dispute that Eisentraut's testimony was the exact opposite of what Sanford actually stated to her. Instead, the State blames Defendant, arguing Defendant contradicted himself in a prior interview.[5] The State's explanation is flatly contradicted by the record. According to the State, Eisentraut drew a "reasonable inference" that he was in Smith's home on April 16 from his statement, "we hung out there for about an hour." (Appendix D to State's Response.) Defendant said:

> … she called me up oh, Friday the – I believe it's the 15th – just said she wanted to see me and I took a shower and took about two hours and went over and picked her up. She, uh, we hung out there for about an hour and we came back here and talked to my mom for about hours and – excuse me, I'm getting a cigarette, and we went to bed about 10:30

Sanford's statement relates to April 15, not April 16 (the day of Smith's death), and spending the night at *his* residence where he lives with his mother. Defendant says nothing about "half an hour." And, as stated, when asked directly in a later interview, he specifically denied going in the home. The record does not support the State's argument about a "reasonable inference" nor does it justify Eisentraut's misrepresentation to the grand jury.

The State also attacks defense counsel stating he failed to cite accurately Eisentraut's testimony. The Court has considered the text as cited in the State's Response, page 11, and finds no merit to the State's claim.

The Court finds that Eisentraut statement that Defendant said that he entered Smith's home on April 16 was false and material and that Eisentraut knew that it was false.

2. An Act of Violence

Defendant's second issue is Eisentraut's testimony that one of Smith's co-workers stated Defendant pushed her down the stairs. This was material untrue testimony that alleged a specific act of physical violence between Defendant and Smith for the purpose of leading the grand jury to believe that Defendant had been violent toward Smith.

On March 2, 2017, Eisentraut told the grand jury:

> A: [Denise] even relayed to one of her co-workers that [Mr. Sanford] had been physical with her and had **pushed her down the stairs.**

[5] Eisentraut interviewed Sanford three times.

(GJ Transcript, Exh. A, p. 13, ll. 15-17, emphasis added.)

She repeated this allegation in discussing an item on Defendant's Facebook page:

A: And I thought that was odd, since I have been given information that Denise had told one of her friends or at least one of her co-workers that **he had pushed her down the stairs of her two-story town home.**

(*Id.*, Exh. A, p. 25, ll. 14-17, emphasis added.)

The record supports Defendant's position that the statement was knowingly false. There was no evidence presented at trial that Smith made this statement to anyone. The State called several of Smith's co-workers at trial. Guadalupe Alvarez- Shaw testified that she overheard a loud argument between Smith and Defendant. Yolanda Martinez testified that Smith was "stressed out" and mentioned problems in her relationship with Defendant. Christine Bartley Zimiga stated Smith said she was afraid at one time but Zimiga also testified that Smith was excited to see Defendant on April 15. None of these witnesses testified that Defendant pushed her let alone pushed her "down stairs."

The State contends that Eisentraut did not commit perjury at the grand jury because Eisentraut testified as to what she was told. In *Moody*, the Court found that the detective's testimony as to what police informant Logan told him may have been false but relaying Logan's statement did not constitute perjury. *Moody*, 208 Ariz. at 440. The State sources Eisentraut's testimony to her 12/29/2012 lab request where she wrote that "one of Denises [sic] told me Denise had confided to her that Patrick often grabbed her and **pushed her down**." (Exh. E to Motion to Dismiss, emphasis added.)

However, what she told the grand jury is not what she wrote. She testified that a co-worker said that Defendant pushed Smith "down the stairs" and "down the stairs of her two-story home." Pushing someone down a flight of stairs is distinctly different conduct than a push. A push down stairs conveys an intent to hurt or even kill someone. Before the grand jury she first said "down the stairs." Then she changed it to "down the stairs of her two-story town home," conveying an even greater danger and risk of harm. Eisentraut did not relay at all what a witness purportedly told her. And there is no support in Exhibit E, her other reports, or the record for her testimony.

Eisentraut's false statement was material. She intentionally falsified her testimony to bias the grand jury against Sanford. The State charged Defendant with murder, the most serious crime. Eisentraut's statement told the grand jury that Defendant had a propensity for violence by describing a past instance of violent behavior without any factual support.

The Court finds that Eisentraut falsely testified that a coworker said that Sanford pushed Smith down the stairs, knowing that her statement was false and that her testimony likely influenced the outcome of the grand jury proceeding.

3. The Toilet Seat

Next, Defendant asserts that Eisentraut falsely told the grand jury that the toilet seat was up in the master bathroom on April 16, 2011 to lead the jury to believe that Defendant was upstairs in the master bedroom area where Smith was found. She testified:

> Q. [D]id you notice if the toilet seat was up or down in the house?
>
> A. Yes, and it's one of those things you go back through and you go back through and sometimes you will notice something that you might not have noticed the first time around. One of the things I notice while reviewing these photographs and conducting…looking for more of an analysis of everything in the scene, I noticed the toilet seat in the master bedroom was up. And, Denise didn't seem to be the type of woman that would move it up.

(Exh. A, p. 35, ll. 1-10.)

The statement was false. It is undisputed that, on April 16, 2011, the toilet seat in the **master** bath was not up when police arrived and took photographs. The issue is whether Eisentraut knew or should have known that the statement was false. The State contends that Eisentraut did not intend to misstate the evidence. Scene photographs depict the toilet seat up in the **guest** bath. The State claims that Eisentraut inadvertently confused the master bath with the guest bath and that her error had no impact on the grand jury.

The record does not support the State's position. Eisentraut reported the same false information at least twice in two reports dated February 7, 2013 and January 9, 2014. (Exhs. F and G to Motion.) She used that "mistake" to support her request to MCAO to charge Defendant with murder. Exh. G. Her testimony was not an innocent error.

Nor was it harmless. It furthered the State's theory that Defendant was in the home on April 16, 2011. It placed Defendant upstairs in the home near Smith and the firearm and corroborated Eisentraut's false statement that Defendant said he went inside the home on April 16, 2011.[6]

The State asserts that the statement was immaterial because any raised toilet seat (master or guest bath) in Smith's home is evidence that Defendant was there. The grand jury did not

[6] In Exhs. F and G, Eisentraut also referenced the toilet seat in the master bath in connection with a shell casing found in the master bath trash can. However, she did not testify about the casing at grand jury.

know about the guest bath. The State did not present any evidence regarding the guest bath. They heard only Eisentraut's false testimony about the master bath area next to the bedroom where Denise and gun lay.

The Court finds that Eisentraut's statement regarding the toilet seat in the master bathroom was false and material.

Transfer DNA

Finally, Defendant contends that Eisentraut and the prosecutor presented false information to the grand jury regarding transfer DNA, the process whereby DNA is deposited on an item indirectly through a third person or object. In this case, transfer DNA presented a difficulty for the State's theory because it provided a scientific explanation for Defendant's DNA found on the gun. Because of transfer DNA, Smith could have easily transferred Defendant's DNA from her hand to the gun.

At the grand jury, Eisentraut testified:

> Q (Grand Juror): Is it possible for that DNA that is under the fingernails to transfer to the gun if she used it?
>
> Q (Prosecutor): Is it fair so say when it comes to DNA and things like this, anything is possible?
>
> A (Eisentraut): Uh-huh.
>
> Q (Prosecutor): And another question you can look at is this probable, and in a case like this, is it probable to have DNA transfer of that type of nature in this case?
>
> A (Eisentraut): No. And as previously stated, her fingernails were extremely short during the scene investigation…And so that cellular material was found very deeply up underneath, not in a way where it would be easily transferable.
>
> Q (Prosecutor): So, is it fair to say possible, but most likely not probable.
>
> A (Eisentraut): Yes, fair to say.

(GJ Transcript, Exh. A, pp. 56-57, ll 25; 1-19.)

Eisentraut's testimony raises several issues. First, it was incorrect. Transfer DNA is as common as DNA deposited by direct touch and just as likely to occur. At trial, the State's DNA expert, Dana Chapman, called transfer DNA the "first principle of forensic DNA:"

> The first principle of forensic DNA is that DNA is transferring from both items. So if I'm coming in contact with a cup, I'm leaving my DNA behind. If there was DNA on the cup, I'm also potentially picking up some of that DNA.

(Chapman Transcript, Exh. C to Motion, p. 81, ll. 5-10.) She went on to testify in detail about the concept of transfer. She stated that there is no way to distinguish between DNA from direct or primary contact and DNA found due to secondary transfer.

> Q. Is there any way for you to tell if any of those individual people had actually touched that item?
>
> A. There isn't a way currently to determine whether someone physically came in contact with the item themselves.

(Id., p. 69, l. 25 – p. 70, l. 4.) *(See also* p. 71, ll. 1-10; p. 74, ll. 8-15, 16-25; pp. 75, ll. 1-25; p. 77, ll. 4-5.) Eisentraut's testimony that it was "not probable" that Smith could not have transferred Defendant's DNA to the gun was deceptive.

Second, the prosecutor manipulated the juror's question to elicit a favorable answer for his case. A juror asked a clear question: "Is it possible for that DNA that is under the fingernails to transfer to the gun if she used it?" Before Eisentraut could answer, the prosecutor interjected and re-phrased the question, adding the phrase "anything is possible." Then he re-phrased again to suggest that DNA transfer was not "probable" "in a case like this." Finally, he re-stated the question as a conclusion, "So, is it fair to say possible, but most likely not probable." In short, he did not allow an answer to the juror's question. He re-phrased the juror's question to elicit an answer favorable to the State.

In considering Defendant's Motion to Dismiss, the Court is limited to a review of perjured testimony. Despite the misleading questioning by Rademacher, the Court finds that Eisentraut's DNA testimony falls more within realm of opinion than fact. The questions and answers related to the possibility and probability of DNA transfer, and the testimony on this issue at grand jury was not sufficiently detailed for the Court to conclude that Eisentraut committed perjury on this issue.

Conclusion

The State prosecuted Defendant on an indictment marred by multiple instances of perjury, violating his right to due process. Eisentraut knew from her investigation that Defendant denied entering the home on April 16, 2011, that no one reported that Smith had been pushed down the stairs at her home, and that Defendant did not leave the toilet seat up in the master bath. This testimony tainted the case with false information for the sole purpose of obtaining an

indictment. Her gratuitous personal opinions and commentary further manipulated the proceeding so that her false statements would have greater influence over the grand jury. When a juror asked if police canvassed the neighborhood, she stated yes but no one reported "anything suspicious" and "that's a very common scenario in those types of neighbors," suggesting that something suspicious had occurred. (Exh. A, p. 58, ll. 4-9.) Her statements undoubtedly affected the grand jury's decision. They were the voice of a police detective who essentially told them that Defendant is a violent person capable of murder.

Failure to Disclose Impeachment Evidence

The second area of alleged misconduct is the State's failure to disclose impeachment material regarding Eisentraut. The State had a duty to disclose the information under Criminal Rule 15.1 and *Brady v. Maryland*, 373 U.S. 83 (1963). The information pertained to a formal inquiry within MCAO regarding Eisentraut's grand jury testimony in another matter. The information could have been used to impeach Eisentraut in this trial. The State's failure to produce it constitutes egregious misconduct because Eisentraut's credibility was central to the State's case and the information may have had "an important effect on the jury's determination." *Milke*, 236 Ariz. 276 at 280 (2014) (internal citation omitted). In addition, the information was known to the prosecution months before trial. Post-trial, even after the prosecutor knew about it, he failed to disclose it.

The Impeachment Evidence

In February, 2019 (9 months before this case went to trial in November 2019), an MCAO prosecutor, Jason Kalish, initiated an inquiry regarding Eisentraut's grand jury testimony in an unrelated matter, *State v. Schroeder*, CR2017-132477-001. Kalish expressed concern that Eisentraut misrepresented the victim's statement to the grand jury. Eisentraut testified that the witness said that Schroeder pointed a knife at him. In the interview, the witness said that Schroeder was holding a knife and giving him directions but he did not say that Schroeder pointed it at him. MCAO relied on the Eisentraut version in charging Schroeder with kidnapping that witness and child abuse in addition to murder.

Kalish referred the matter to MCAO's Rule 15 Discovery Database Committee, an internal committee that investigates integrity violations by law enforcement officers. MCAO requested Eisentraut explain the basis for her testimony.[7] She responded by email. Then, from February 2019 to February 2020, Eisentraut remained "pending review" by the Rule 15

[7] The Court relies on documents produced in camera by the State and that the Court then ordered disclosed on April 19, 2021. The documents include an email from Kalish to other MCAO prosecutors dated February 21, 2019 referencing subject "Issue with homicide detective" and Eisentraut's written response, a photograph of the victim in a police interview room, and a CD of the victim's statement.

Committee. According to the State's pleadings, in February 2020, MCAO elected not to include Eisentraut on the MCAO Rule 15 Database ("Database" aka "Brady list).

State's Response to Defendant's Requests for Information

In approximately March 2021, Defendant's investigator obtained a copy of a document generated by MCAO titled "Brady Report" dated December 23, 2019. Eisentraut's name appears on the document. (Exh. K to Motion to Dismiss.) Defense counsel contacted the prosecutor requesting information about Eisentraut and the report. (Exhs. L, M, N to Motion.) The State provided no substantive information until Defendant filed his Motion to Dismiss asserting this claim for prosecutorial misconduct and dismissal based on the State's failure to disclose the information.

The State responded that it had no obligation to produce the information. Notwithstanding the objection, the State did produce some materials to the Court for an in camera review.[8] The Court found the materials relevant to Eisentraut's credibility and ordered the State to produce these and any other "materials and information related to a *Brady* inquiry and/or investigation regarding Det. Eisentraut." Ruling 4/19/2021. More litigation ensued. Defendant requested additional materials referenced in the disclosed documents. The State refused. Defendant filed a Motion to Compel. Ultimately, the State produced and the Court reviewed more documents in camera and ordered them disclosed with redactions.[9]

Duty to Disclose

The State claims that it was not obligated to produce information regarding the Kalish referral because MCAO did not place Eisentraut's name in the Database. It maintains that under *Brady* it is required to disclose related to an officer's truthfulness if only if the officer is in the Database.

That is not correct. The State had a duty to disclose the information. Period.

> To comply with *Brady/Giglio*, the prosecution is required unilaterally to disclose **any impeachment or exculpatory evidence** that is favorable to the defendant

[8] Kalish's 2/21/2019 email, Eisentraut's response, an excerpt of Eisentraut's grand jury testimony, and a photograph and a CD of the victim's interview.

[9] MCAO's Civil Department got involved and submitted the additional materials related to Eisentraut's Rule 15 inquiry with proposed redactions and a privilege log. The Court approved the proposed redactions except for one sentence that referred to another case and contained no work product or other protected information. Ruling 6/25/2021.

> and which may create a reasonable doubt in jurors' minds regarding the defendant's guilt.

Milke, 236 at 280. "Favorable evidence includes both exculpatory and impeachment material that is relevant either to guilt or punishment." *Milke v. Ryan,* 711 F.3d 998, 1012 (9th Cir. 2013) (Milke's habeas corpus case). Furthermore,

> Regardless of good or bad faith, a state's failure to adhere to *Brady/Giglio* by willfully or inadvertently suppressing favorable evidence violates a defendant's due process rights.

Milke at 280.

The State's disclosure obligation is not limited to information from a database. Nor is it confined to officers that have been through some internal MCAO process. Not only are the dangers of this interpretation obvious (think foxes and henhouses), but nowhere does the case law support that position. Moreover, the State's duty includes any information known to the prosecutor **or** law enforcement. It is the prosecutor's "duty to learn of any favorable evidence known to the others acting on the government's behalf in the case including the police." *Id.* at 283 (citation omitted.). "[T]he prosecution is deemed to have knowledge of and access to anything in the possession, custody or control of any [federal] agency participating in the same investigation of the defendant." *United States v. Bryan*, 868 F.2d 1032 (9th Cir. 1989).

Therefore, while MCAO's internal process may provide one mechanism for identifying information about officers, the scope of the State's obligation to disclose impeachment evidence does not stop there.

The State also argues that it had no duty to disclose because the information was not relevant or admissible. Again, that is not the law. The duty extends to any evidence that might affect credibility or be used for impeachment. "When, as here, "the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within this general rule [of mandatory disclosure]." *Milke*, 236 Ariz. 276 citing *Giglio v. United States*, 405 U.S. at 154 (1972) (internal citation omitted). Admissibility is a separate issue. [10]

Furthermore, the information about Eisentraut *was* relevant and material. "Due process imposes an "inescapable" duty on the prosecutor "to disclose known, favorable evidence rising

[10] The State's argument contradicts MCAO's own policy which instructs DCAs: "Material that must be disclosed is not always admissible evidence in trial." MCAO Prosecution Policies and Procedures, 6.4(B)(3). Disclosure and admissibility of impeachment material are separate issues.

to a material level of importance." *Milke*, 711 F.3d 998, 1012 (9th Cir. 2013)(internal citation omitted). The prosecutor in *Schroeder* (Kalish) initiated MCAO's integrity review process of an officer. His concern involved the same officer (Eisentraut) engaging in the same type of misconduct alleged here – presenting false sworn testimony to the grand jury. Eisentraut was and is the primary law enforcement witness for the State in the Sanford matter. She put the case together and literally touched every aspect of it. Her credibility was a significant issue for the State at trial as Defendant's cross-examination demonstrated. Defendant was entitled to impeach her with the information. Given the myriad of issues with Eisentraut's truthfulness, there is no question that the information would have affected her credibility before the jury.

MCAO's "pending review" of Eisentraut was ongoing months before and during the Sanford trial. It was never disclosed. Post-trial the State continued to withhold the information even as it prepared to re-try Sanford. The prosecutor knew about the Kalish referral by at least December 2020 – before defense counsel requested it. (State's Notice to the Court, 5/28/2021.) Yet, when Mr. Huss asked for information in March 2021, the prosecutor stalled with non-responses, such as "Once I have a response I will let you know." It took a Motion to Dismiss, a Motion to Compel, and two Court orders for Defendant to obtain the information. Frankly, had it not been for Defendant's investigator, the State never would have disclosed it.

Incredibly, the State claims Defendant is not prejudiced because Defendant can use the information in the re-trial. (Response, p. 20.) That argument underscores the intentional disregard for the misconduct that took place. Had the information been disclosed in 2019, *there might be no re-trial* because the information "may well [have been] determinative of guilt or innocence." *Id.* at 282.

Conclusion

For these reasons, the Court finds that the prosecution engaged in egregious prosecutorial misconduct in failing to disclose impeachment evidence before and during the trial and for more than a year thereafter.

Garrett Testimony

Lee Garrett was the State's firearms examiner who testified as an expert witness as to the distance between the gun and Smith when the gun fired. In pre-trial disclosures and defense interview, Garrett stated that he based his opinion in part on the gun powder pattern on Smith's blouse. At trial, he stated that he did not rely on the blouse. On cross-examination Garrett refused to admit that he had said something entirely different in his pre-trial interview and report. Defendant asserts that Garrett's "blatant dishonesty" constitutes prosecutorial misconduct.

The Court does not find that Garrett's trial testimony rises to the level of prosecutorial misconduct. The Court does not find that it affects the structural integrity of the case unlike Eisentraut's grand jury testimony and the State's failure to disclose impeachment evidence. The Court does find that the State failed to disclose what Garret said at trial about the blouse and that the lack of disclosure unfairly impacted the defense at the time. However, since the Court has precluded Garrett's testimony on other grounds, the Court need not consider an appropriate sanction for non-disclosure. See Ruling 7/2/2021.

More

The Court is troubled by the State's failure to acknowledge and take responsibility for Eisentraut's misconduct as well as their own. Prosecutors have a responsibility to serve truth and justice first. *United States v. Kojayan*, 8 F.3d 1315, 1323 (9th Cir. 1993). In the State's briefing, the Court cannot find an iota of appreciation for the seriousness of its misconduct in the briefs.

Instead, the prosecutor tries to shift blame by stating that, if defense counsel had interviewed Eisentraut a second time, he could have discovered information about her. (Response to Motion to Dismiss, pp.20-21.) He blames the State's lack of disclosure on Defendant's discovery requests. (State's Response to Motion to Compel.) He portrays the Kalish referral as a police matter until defense counsel refutes that portrayal. (State's Motion to Correct Minute Entry with Van Dorn Affidavit 4/23/2021; State's Supplemental Notice to the Court with Van Dorn Affidavit 6/8/2021.) He misstates the record. Dana Chapman did not testify that transfer DNA is a "phenomenon" or words to that effect.[11] He makes legal arguments directly contradicted by the case law, including *Brady* and *Milke*.[12] These tactics do not further justice and, with respect to record and legal citation, they ignore the ethical obligations of candor and honesty to the Court.

Conclusion

The State obtained this indictment using perjured testimony. Even after trial, the State persists in making arguments directly contrary to the most cherished principles of law and due process, including the protections that *Brady* and *Milke* emphasize are afforded to all defendants. Given the pre- and post-trial misconduct, the Court finds the appropriate remedy is dismissal with prejudice, as nothing short of that remedy will end this miscarriage of justice and deter the State from similar conduct going forward.

[11] Counsel's use of the single quote (as if he is not citing a direct item of testimony) does not make his representation less misleading. (State's Response, p. 12; See Chapman testimony above.)

[12] See also counsel argument that Defendant's claim for dismissal based on Eisentraut's perjured grand jury testimony refuted in *Moody, supra*.

Therefore, based on the prosecution's egregious misconduct in presenting material, false testimony to the grand jury and failing to disclose impeachment evidence before and during trial and for months thereafter,

IT IS ORDERED dismissing with prejudice the indictment and pending charges against Sanford.

IT IS FURTHER ORDERED denying the State's Motion to Strike Defendant's Reply to Motion to Dismiss.

EXHIBIT 8

Clerk of the Superior Court
*** Electronically Filed ***
03/04/2025 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2019-006125-010 DT 03/03/2025

HONORABLE DANIEL G. MARTIN

CLERK OF THE COURT
L. Stuebe
Deputy

STATE OF ARIZONA

S P 2 WHITE COLLAR/CYBER CRIME
COUNTY ATTORNEY

v.

AMANDA DAHLSTROM (010)

DAVID K LE LIEVRE

DISPOSITION CLERK-SCT
JUDGE DANIEL MARTIN

ORDER FOR DISMISSAL WITH PREJUDICE

Pending before the Court is Defendant Amanda Dahlstrom's February 12, 2025 Motion to Dismiss for Prosecutorial Misconduct, Brady[1] Violation, Rule 15.1 Violation, and Due Process Violations, the State of Arizona's February 18, 2025 Response, and Ms. Dahlstrom's February 20, 2025 Reply. The Court heard argument on February 13, 2025 and February 27, 2025. Also relevant to the Court's ruling are the arguments presented regarding Co-Defendant Matthew Rodriguez's February 12, 2025 Renewed Motion to Dismiss and Request for Willits[2] Instruction and February 25, 2025 Supplement to Motion to Dismiss and Request for Willits Instruction (CR2020-001857-004) and Co-Defendant William Whitley's February 20, 2025 Motion to Dismiss for Brady Violation, Rule 15.1 Violations, and Due Process Violations (CR2020-001857-003), and the entire record in this case.

PROCEDURAL HISTORY

On September 17, 2019, the State filed an Indictment in CR2019-006125 charging Ms. Dahlstrom with Conspiracy to Commit Fraudulent Schemes and Artifices and Illegal Control of an Enterprise, and multiple counts of Fraudulent Schemes and Artifices and Theft. The State

[1] *Brady v. Maryland*, 373 U.S. 83 (1963).
[2] *State v. Willits*, 96 Ariz. 184 (1964).

filed similar charges against Co-Defendant Susan Rodriguez in that case. On August 28, 2020, the State filed an Indictment in CR2020-001857 charging Co-Defendants Susan Rodriguez, William Whitley and Matthew Rodriguez with Conspiracy to Commit Fraudulent Schemes and Artifices, Illegal Control of an Enterprise, and multiple counts of Fraudulent Schemes and Artifices and Theft. By Order dated December 7, 2022, the Court consolidated the two cases for trial. The substance of the Indictments, and the evidence that has since been developed in support of the charges, is important, but not critical to the Court's ruling. More important, and more critical, is the procedural history of this case, including most particularly a pattern of late disclosure of evidence. It is that pattern, and two significant recent events, that compels the orders entered herein.

On October 29, 2024, after almost four years of litigation, this matter was placed for trial with this Division. The parties anticipated needing approximately two months to complete the trial. The Court conducted a Trial Procedure Conference on December 17, 2024, at which time the Court agreed to continue the trial from January 13, 2025 to March 3, 2025, with a new end date of April 30, 2025. The Court made plain that the March date was firm, and the Court's order states that "no further continuances will be granted absent extraordinary circumstances." In anticipation of pretrial motion practice, the Court set aside two hours for oral argument on February 13, 2025.

As the parties prepared for trial, the State made two extraordinary disclosures. The first, which was made on February 7, 2025, consisted of 1,239 pages of material which had been received in the Maricopa County Attorney's Office in December 2023 (*i.e.*, some 14 months earlier). There is nothing in the record that reflects the length of time this material was in the possession of the investigating agency prior to it being turned over to the prosecutor's office. The second disclosure, which occurred on February 18, 2025, consisted of approximately 135,000 pages of material. This material had previously been disclosed to Ms. Rodriguez and Ms. Dahlstrom in the 2019 matter, but never to Mr. Whitley and Mr. Rodriguez in the 2020 matter. The State appears to have recognized its error while reviewing its own records in preparation for trial.

At the February 13, 2025 oral argument, the Court addressed the State's February 7, 2025 disclosure. The Court recognized that the parties needed time to review the materials, and would be unable to do so in time to begin trial on March 3, 2025. Accordingly, the Court re-set the first day of trial from March 3, 2025 to March 10, 2025. The State appears to believe that the Court's order constituted the sole remedy for the State's late disclosure (*i.e.*, continuance under Rule 15.7(c)(3), Ariz. R. Crim. P.). This impression is incorrect. The Court merely sought to provide the parties with sufficient breathing room to evaluate the impact of the late disclosure on their respective cases.

The Court set further oral argument on Ms. Dahlstrom's and Mr. Rodriguez's motions to dismiss on February 27, 2025. It was during this interim period between oral arguments that the State made its second disclosure to Mr. Whitley and Mr. Rodriguez.[3]

DISCUSSION

The State's disclosure obligations are set forth in Rule 15 of the Arizona Rules of Criminal Procedure. Rule 15.1 governs initial and supplemental disclosures (among other things), and Rule 15.6 sets forth the State's continuing duties. Rule 15.6(b) states: "Any party who anticipates a need to provide additional disclosure no later than 30 days before trial must immediately notify both the court and all other parties of the circumstances and when the party will make the additional disclosure." Rule 15.6(c) states: "Unless otherwise permitted, all disclosure required by Rule 15 must be completed at least 7 days before trial."

The State appears to suggest that as long as all disclosure is completed not later than seven days before trial, it has met its disclosure obligations. *See* Response, at pages 6-7. The Court rejects this assertion as inconsistent with Arizona case law and common sense. *See*, *e.g.*, *State v. Martinez-Villareal*, 145 Ariz. 441, 448 (1985) (delay may constitute prejudice under the discovery rules). When the State charges an individual with a criminal offense, it has an immediate and continuing duty to disclose all of the evidence that bears on that charge. Late disclosure should be a rare exception to this rule, and occur only in such circumstances that the evidence would not otherwise have been discoverable in the exercise of reasonable diligence.

Rule 15.7 addresses sanctions for disclosure violations, and provides:

Available sanctions include, but are not limited to:

(1) precluding or limiting a witness, the use of evidence, or an argument supporting or opposing a charge or defense;
(2) dismissing the case with or without prejudice;
(3) granting a continuance or declaring a mistrial if necessary in the interests of justice;
(4) holding in contempt a witness, a party, or a person acting under the direction or control of a party;
(5) imposing costs of continuing the proceeding; or
(6) any other appropriate sanction.

[3] In her Reply, Ms. Dahlstrom asserts that the State made an additional 113-page disclosure, including material regarding victims Nancy White and Mary Bellis, after she filed her motion to dismiss.

Rule 15.7(c), Ariz. R. Crim. P.

With respect to Mr. Whitley and Mr. Rodriguez, the State candidly acknowledges that given the very recent disclosure of approximately 135,000 pages of discovery, the trial cannot go forward as scheduled. The State proposes that the most appropriate remedy is to continue the trial. While continuance is an available remedy, the State's proposal to continue a two-month trial in a case that has been pending since 2019 (2020 in the cases of Mr. Whitley and Mr. Rodriguez) is manifestly prejudicial to the rights of the parties to have their matters resolved in a timely fashion.

One of the most significant protections in our constitutional structure is the right to a speedy trial as guaranteed by the Sixth Amendment. *See Barker v. Wingo,* 407 U.S. 514 (1972). In *Barker*, the United States Supreme Court identified four factors that must be considered in determining whether a defendant has been denied this right: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of the right, and (4) the prejudice caused to the defendant. *Id*. As the Arizona Supreme Court recognized in *State v. Leslie*, 147 Ariz. 38 (1985), the most important factor to be considered in this analysis is the prejudice to the defendant arising from the delay. *Id*. at 45; *see also State v. Henry,* 176 Ariz. 569, 578-79 (1993) (same).

Neither Ms. Dahlstrom nor her co-defendants specifically assert a violation of their Sixth Amendment right, and the Court does not decide Ms. Dahlstrom's motion on this basis. Rather, Sixth Amendment jurisprudence provides a structure to assess the parties' claims for denial of due process based on the delays engendered by the State's late disclosures. In effect, those late disclosures have placed Ms. Dahlstrom (and the other co-defendants) in the untenable position of having to accept a delay in the resolution of the charges against them in order that they may assess the voluminous evidence now propounded by the State. But the continuance proposed by the State cannot easily be accomplished when balancing the schedules of four defense attorneys, each of whom has devoted substantial time and effort to the preparation of these cases for trial to the detriment of other cases and clients. It is hard to discern a scenario under which these cases could be re-set for trial before late summer or early fall. Further, it is unconscionable (in the sense of being neither right nor reasonable) to expect Ms. Dahlstrom or the other co-defendants to continue to live under the shadow of the multiple and very serious charges against them solely based on the State's failures of disclosure so late in the trial process.[4]

[4] As counsel for Mr. Rodriguez remarked at the February 27th oral argument, had the State's disclosures come after jeopardy attached, dismissal would have been the "obvious" choice.

Having considered all of these circumstances, it is the judgment of the Court that the State's late disclosures have severely prejudiced Ms. Dahlstrom (and each of the other co-defendants), and that dismissal with prejudice is the only appropriate remedy.

Based on the above analysis, the Court need not consider Ms. Dahlstrom's claims of prosecutorial misconduct or *Brady* violations.

ORDERS

For the reasons set forth above,

IT IS ORDERED dismissing the charges against Ms. Dahlstrom in CR2019-006125-010 with prejudice.

IT IS FURTHER ORDERED denying, as moot, all other pending motions in this case.

IT IS FURTHER ORDERED vacating all pending dates.

EXHIBIT 9

Clerk of the Superior Court
*** Electronically Filed ***
05/06/2020 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2017-000890-001 DT 05/04/2020

HONORABLE HOWARD D. SUKENIC

CLERK OF THE COURT
Y. King
Deputy

STATE OF ARIZONA

JOSEPH HINRICHSEN

v.

MARCO ANTONIO SOLORIO (001)

DAVID K LE LIEVRE

JUDGE SUKENIC

JESSICA ANN GATTUSO

MINUTE ENTRY

The Court, having reviewed all pleadings and in consideration of the oral argument held on April 27, 2019, finds, as to Defendant's Motion to Dismiss with Prejudice for Egregious Prosecutorial Misconduct Pursuant to Brady, the following:

RULE 15.1 VIOLATION (BRANDY V'S CRIMINAL HISTORY)

1. Defendant made a request for disclosure under Rule 15.1 Ariz. R. Crim. P. on February 23, 2017;
2. The State filed their Notice of Disclosure on April 5, 2017 listing, among other things, Brandy V. as a witness;
3. Rule 15.1 Ariz. R. Crim. P. requires, in part, compliance within 30 days after the request and it is immaterial that the State no longer intends to call Brandy V. as a witness as the State's decision, years later, is not relevant to the timeline established;
4. The State did not comply with this Rule and Brandy V's multiple felony convictions were only discovered by Defendant when Defendant hired a private investigator who obtained the information. This occurred on or around February of 2020, three years after the request was made and almost three years from the date compliance was required.

5. Only when the State was confronted with this information did the State, reluctantly and conditionally, confirm the information. This occurred on February 26, 2020.
6. The Court considers this to be a non-disclosure on the part of the State and not a late disclosure.
7. Defendant has established that this information is important to the third party alternative defense being developed as well as to the potential impeachment value of certain witnesses.
8. The failure of the State to disclose this information did prejudice Defendant as this information would certainly have bolstered Defendant's claim that the disclosure of the DCS records of Brandy V. was necessary and most certainly would have been utilized by Defendant to make a more persuasive argument to this Court and the appellate court. Furthermore, Defendant had to expend resources to hire an investigator and to engage in litigation to bring this matter to the Court's attention. Defendant does have ample time however to utilize this information in his defense.
9. The Court accepts the State's explanation of mistake and inadvertence to be credible. That said, upon the litigation ensuing regarding Brandy V's DCS records, the State should have exercised more due diligence. Furthermore, the State, having been presented with their error by Defendant, should have been more courteous and helpful in verifying the information.

THE COURT FINDS that the State is in violation of Rule 15.1 Ariz. R. Crim. P. and that sanctions are warranted under Rule 15.7 Ariz. R. Crim. P.

THE COURT ORDERS that, pursuant to Rule 15.7(6) Ariz. R. Crim. P., the State shall reimburse Defendant for the cost of the private investigator, to include any expenses, as well as any quantifiable sum expended and related to the filing of this motion, the reply and oral argument. Defendant shall have ten calendar days from the date of this order to file an affidavit detailing such costs and expenses. The State shall have ten calendar days, from the tenth day after this order, to file an objection to the amount requested. Thereafter, the Court shall rule on the amount to be paid.

BRADY VIOLATION/PROSECUTORIAL MISCONDUCT (BRANDY V'S CRIMINAL HISTORY)

To comply with *Brady/Giglio*, the prosecution is required unilaterally to disclose any impeachment or exculpatory evidence that is favorable to the defendant and which may create a reasonable doubt in juror's minds regarding the defendant's guilt. *See Strickler v. Greene*, 527 U.S. 263, 281-82(1999). Regardless of good faith or bad faith, a state's failure to adhere to

Brady/Giglio by willfully or inadvertently suppressing favorable evidence violates a defendant's due process rights. *See Brady v. Maryland*, 373 U.S. 83, 86-87 (1963).

Here, as ruled above, the State violated Rule 15.1 Ariz. R. Crim. P. but the Court finds credible the explanation of mistake and inadvertence on the part of the State as to the violation. The Court finds no bad faith on the part of the State. The record, as to this issue, does not support a finding of prosecutorial misconduct. The focus turns to whether or not the State's mistake or inadvertence in failing to turn over Brandy V's criminal history prejudicially violated Defendant's due process rights and is a "Brady Violation".

Evidence is considered "material" for purposes of "Brady" "only if there is reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *United States v. Bagley*, 473 U.S. 667, 682 (1985). Here, the evidence of Brandy V's priors was material to the defense. Furthermore, the State never disclosed the information. The Court is troubled that the State does not recognize that this information must be disclosed no matter what they believe the theory of defense to be. However, Defendant still has ample time to make use of this evidence and to fully prepare. As an illustration, *Brady* is not violated when previously undisclosed exculpatory information is revealed at trial and defense counsel has the opportunity to present it to the jury. *See State v. Jessen*, 130 Ariz. 1,4 (1981).

THE COURT FINDS the record does not support a finding of Prosecutorial Misconduct or a "Brady Violation".

BRANDY V'S MENTAL HEALTH HISTORY

In the same February 23, 2017 request for disclosure, Defendant also requested information, to paraphrase, as to the mental health or drug addiction history of any witness. The request is not governed by the Arizona Rules of Criminal Procedure but there is case law supportive of this request cited by Defendant.

Here, the Court cannot conclude that the State would have sufficient awareness or resources to run checks on every witness they noticed. While Brandy V. has been brought to the forefront during this litigation she was not specifically identified in the request in order for the State to make a targeted search. Now that this issue has been brought to the forefront, with specificity, the State must examine the case-law cited by Defendant and make a determination if they are going to provide any documentation in their control. The Court is also aware that there is a Motion to Compel Brandy V's Rule 11 File by Defendant dated April 23, 2019.

THE COURT FINDS the State is not in violation for the alleged failure to turn over records as to Brandy V's mental health and drug addiction history.