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| IN THE FOURTH JUDICIAL DISTRICT COURT  UTAH COUNTY, STATE OF UTAH | |
| STATE OF UTAH,  Plaintiff,  v.  JANE DOE,  Defendant. | **AMENDED** MOTION FOR COURT ORDER TO OBTAIN RECORDS FROM THE UTAH COUNTY SHERIFF PURSUANT TO THE GOVERNMENT RECORDS ACCESS MANAGEMENT ACT  Case No. 000000000  Judge XXXXX |

Defendant JANE DOE (“Ms. Doe”), by and through her attorney of record, BENJAMIN R. ALDANA, hereby moves this Court, pursuant Utah Code § 63G-2-202, to order the Utah County Sheriff to release the following records to her attorney:

Unredacted and unedited copies of any and all bodycam, dashcam, and any and all other video footage associated with 00UC00000, which is the Utah County Sheriff incident number associated with the above-entitled matter.

**FACTS**

1. In this case, the Utah County Attorney’s Office has turned over six clips of bodycam footage from the body worn cameras of 3 different deputies (notwithstanding the fact that the police report from 00UC00000 lists 13 different officers as having responded to the incident); 2 clips of dashcam footage from 2 different police vehicles; and 1 clip of video footage from the interior of a police vehicle.
2. The bodycam footage appears to have been edited and/or redacted because there are multiple portions throughout the footage where the screen turns completely green and no sound can be heard, despite the fact that the time clock on the video clip continues to run.

**ARGUMENT**

**THE RECORDS IDENTIFIED AND REQUESTED IN THiS MOTION ARE NECESSARY INVESTIGATIVE MATERIALS THAT MS. Doe**

**HAS THE RIGHT TO OBTAIN FOR uSe in THE**

**PREPARATION OF Her DEFENSE**

The United States and Utah Constitutions protect Ms. Doe’s right to meaningfully present a *complete* defense and to confront the witnesses against her. *Crane v. Kentucky*, 476 U.S. 683 (1986) (“Whether rooted in the Due Process Clause . . . or the Sixth Amendment . . . the Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense.’”); *see, e.g.*, *State v. Fulton*, 742 P.2d 1208 (Utah 1987), cert. denied, 484 U.S. 1044 (1988) (recognizing right to a fair trial under state and federal due process provisions); *see also* *State v. Kendrick*, 538 P.2d 313 (Utah 1975) (recognizing the right to confrontation under Utah Const. Art. I § 12); *see* Utah Const. Art. I § 7 (“No person shall be deprived of life, liberty or property, without due process of law.”).

Additionally, in *Brady v. Maryland*, the Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment.” 373 U.S. 83, 87 (1963). The United States Supreme Court later extended its holding in *Brady v. Maryland* to include evidence that affects the credibility and/or reliability of a government witness stating, “[w]hen the ‘reliability of a given witness may well be determinative of guilt or innocence,’ nondisclosure of evidence affecting [that] credibility falls within this general rule.” *Giglio v. United States*, 405 U.S. 150, 154 (1972) (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959)). This principle of required disclosure was reaffirmed in *United States v. Bagley*, where the Supreme Court further explained that the *Brady* rule extends to “[i]impeachment evidence . . . as well as exculpatory evidence . . . [because] if disclosed and used effectively, [impeachment evidence] may make the difference between conviction and acquittal.” 473 U.S. 667, 676 (1985).

The requested records are being sought for the purpose of conducting a full defense investigation into the facts underlying the allegations in the case now brought by the State of Utah against Ms. Doe. The records also may contain impeachment material, but since they are unavailable to defense counsel, it is unknown if they contain impeachment material, or other information material to Ms. Doe’s guilt or innocence. The records at issue are non-public records, the release of which is controlled by the Government Records Access Management Act (“GRAMA”), found in Utah Code §§ 63G-2-101, *et seq*.

Normally the requirements of Rule 16 of the Utah Rules of Criminal Procedure would be sufficient for defense counsel to gain access to the materials sought in the Motion, but it appears that Rule 16 is not sufficient. There is already an order in place in this matter directing the State to comply with Rule 16, and although it appears that the Utah County Attorney’s Office has attempted comply, the Utah County Sheriff’s Office—which is a part of “the State” in this case—seems to be preventing compliance with Rule 16.

As stated above, defense counsel has received several clips of video footage from the prosecution, and has no reason to believe that anything is being withheld by the Utah County Attorney’s Office. What seems to be the problem is the Utah County Sheriff’s Office taking the unusual step of redacting and/or editing video footage related to this case before turning it over to the Utah County Attorney’s Office for disclosure to the defense. Because Rule 16(a)(1) specifies the “prosecution team” as being subject to discovery obligations under the Rules of Criminal Procedure, rather than singling out only the “prosecutor,” the Utah County Sheriff’s Office should think long and hard before withholding Rule 16(a)(1) materials—by redacting and/or editing bodycam footage—especially since Rule 16(a)(2) specifically requires Rule 16(a)(1) materials like bodycam footage to be disclosed to the defense “before the preliminary hearing,” which in this case is scheduled two days from now. *See* Utah R. Crim. P. 16(a)(2) (“In every case, all material or information listed in paragraph (a)(1) that is presently and reasonably available to the prosecutor must be disclosed *before the preliminary hearing*.”) (emphasis added). Thus, in this case, according to Rule 16(a)(2), the Utah County Sheriff’s Office is dangerously close to not complying with Rule 16. And given that the video footage will likely take the defense time to review, the footage needs to be provided very soon.

Because records at issue in this Motion are Utah County Sheriff’s Office records likely classified as private, protected, or controlled under GRAMA, GRAMA requires that a court order be obtained before access to what is sought in this Motion will be granted. *See* Utah Code § 63G-2-207(2)(a)(ii) (“Until the court or an administrative law judge orders disclosure” records classified under GRAMA are “privileged from discovery.”). While exact the classification—out of the three levels of classification set forth in GRAMA—of the records at issue in this Motion are unknown, given the difficulty with obtaining them from the Utah County Sheriff’s Office, Ms. Doe assumes that they are classified in some manner that would require a court order before the Utah County Sheriff’s Office could be required to produce them.

§ 63G-2-202(7) states that “[a] governmental entity shall disclose a record pursuant to a court order signed by a judge from a court of competent jurisdiction,” so long as:

1. the record deals with a matter in controversy over which the court has

jurisdiction;

(b) the court has considered the merits of the request for access to the record;

(c) the court has considered and, where appropriate, limited the requester’s use and further disclosure of the record in order to protect:

(i) privacy interests in the case of private or controlled records;

(ii) business confidentiality interests in the case . . .; and

(iii) privacy interests or the public interest in the case of other protected

records;

(d) to the extent the record is properly classified private, controlled, or protected, *the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access*; and

(e) where access is restricted by a rule, statute, or regulation referred to in § 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

§ 63G-2-202(7) (emphasis added).

1. **Matter in Controversy**

Here, there is a matter in controversy before the Court: Ms. Doe has been accused of engaging in criminal behavior, and felony charges are now pending against her in this case.

1. **Merits of the Request for Access to the Records**

Ms. Doe’s attorney is obligated to investigate her case and is entitled to completely understand what occurred during the law enforcement response to the incident at her home. That response is documented on the video footage at issue in this Motion, but the defense does not appear to have been provided with full access to that footage. Additionally, the unredacted/unedited video footage may contain impeachment material, or other information material to Ms. Doe’s guilt or innocence, that will likely remain unknown unless the footage is provided by the Utah County Sheriff’s Office.

1. **Limitation on Further Disclosure**

The Court can also order any limitations that it deems appropriate regarding any further dissemination of the records, consistent with § 63G-2-202(7)(c), in order to prevent any use of the records sought beyond the use that is described in this Motion, which is to exercise the right to have a constitutionally adequate defense.

1. **Interests Favoring Access vs. Interests Favoring Restriction of Access**

And Ms. Does’s interest in having this case fairly adjudicated is more than equal to, and in fact substantially outweighs, any interests favoring restriction of access to the records at issue in this Motion. Simply put, Ms. Avila’s attorney must be granted full access to the records sought in this Motion, so that her right to a fair trial is protected, which far outweighs the Utah County Sheriff’s Office’s interest in being permitted to continue restricting access to what is sought.

Ms. Doe has a clear Sixth Amendment right to have a full and fair defense in this case. This includes the right to have an adequate investigation performed by her defense team and to have her defense team seek out and acquire impeachment material. *See, e.g.*, *State v. Templin*, 805 P.2d 182, 188 (Utah 1990) (“If counsel does not adequately investigate the *underlying facts* of a case . . . counsel’s performance cannot fall within the ‘wide range of reasonable professional assistance.’”) (emphasis added). Without acquiring the unredacted and unedited video footage at issue in this Motion, defense counsel will be rendering ineffective assistance of counsel.

While the Utah County Sheriff’s Office may have some attenuated interest in restricting access to some of what is sought in this Motion, Ms. Doe has a far greater interest in ensuring that the allegations against her in this case are fully and fairly adjudicated. When the Utah County Sheriff’s Office’s interests are compared against Ms. Avila’s current state and federal constitutional rights, the Court should allow access to what is sought in this Motion and in the form that it is sought in this Motion. Additionally, Rule 16(a)(1) specifically directs the prosecution team to provide Ms. Doe with the video footage at issue in this Motion.

**CONCLUSION**

There is simply no reason that the unredacted/unedited video footage sought in this Motion should not be provided. But as explained above, there are many reasons that the unredacted/unedited video footage should be provided. But short of a very specific order from this Court, it seems that the unredacted/unedited video footage will likely not be provided to Ms. Doe, and Ms. Doe therefore requests that the Court issue an order, pursuant to its authority to do so under GRAMA, that the Utah County Sheriff’s Office produce the video footage in unredacted/unedited form.

DATED this 26th day of September, 2022.

*/s/ Benjamin R. Aldana*

Benjamin R. Aldana

Attorney for Ms. Doe

CERTIFICATE OF SERVICE

Via the court’s electronic filing system a copy of the foregoing was sent to the Utah County Attorney’s Office, this 26th day of September, 2022.

Additionally, the following individual was served by email:

Utah County Attorney’s Office, Civil Division

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|  |  | */s/ Benjamin R. Aldana* |