

COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE  
Wilmington, Delaware 19801

CARL C. DANBERG  
JUDGE

July 9, 2015

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**Re: State of Delaware v. Luldes Montalvo**  
**Cr. A. No. 1409017977**

**LETTER OPINION ON DEFENDANT'S MOTION TO**  
**SUPPRESS TESTIMONY AS A SANCTION FOR DISCOVERY VIOLATION**

Dear Counsel:

Defendant Luldes Montalvo ("Defendant") stands charged with Driving Under the Influence of Alcohol ("DUI"), in violation of 21 *Del. C.* § 4177(a) following a stop at a DUI Checkpoint on September 5, 2014. On May 20, 2015, Defendant brought the instant Motion to Suppress the State's DVD depicting the investigation of Defendant. The Court granted Defendant's motion and suppressed the DVD. Defendant further sought to suppress the corresponding testimony of the investigating officer, Corporal Marc Martinez ("Corporal Martinez"). The Court took the matter under advisement and rescheduled trial to July 13, 2015. This is the Court's decision and order denying Defendant's requested relief.

**I. Facts**

On October 21, 2014, Defendant filed a discovery request, seeking among other things, "any videotapes or photographs in the possession of the State, relevant to the offense, whether or

not the State intends to offer said tangible objects into evidence.”<sup>1</sup> On December 22, 2014, the State filed a response indicating that “there [was] no media for this matter.”<sup>2</sup> Trial was scheduled for May 20, 2015. Before the Court convened for trial, Defendant was advised for the first time of the State’s possession of DVD evidence depicting the investigation of Defendant, including Defendant’s performance on standardized field testing in the Wilmington Police Department’s interview room. After the Court suppressed the DVD as a remedy for the State’s failure to timely produce it, Defendant further sought suppression of Corporal Martinez’ testimony concerning the matters contained in the DVD. The Court reserved decision and ordered the simultaneous cross-filing of memoranda on the issue of whether the State’s untimely disclosure of the DVD should bar further testimony to matters within the DVD.

Defendant argues that the Court’s election to suppress the contents of the DVD necessarily precludes any testimony touching on the same subject matter contained within the DVD. Defendant posits that otherwise, the Court’s sanction is hollow. In the alternative, Defendant argues that because the DVD is the best evidence of the events recorded, allowing officer testimony on the events of the DVD creates an unfair risk of embellishment. Specifically, Defendant directs the Court’s attention to its decision in *State v. Christopher Bell*,<sup>3</sup> in which the Court disregarded Corporal Martinez’ testimony, as well as all evidence introduced by the State through him due to significant discrepancies present in his testimony.<sup>4</sup>

The State contends that the Court’s suppression of the DVD is an adequate sanction for its violation, and suppressing Corporal Martinez’ testimony because the DVD captured the same conduct he observed would be a harsher punishment than if the State acted in bad faith and no longer had the video.

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<sup>1</sup> Defendant’s Discovery Request, ¶9 (Oct. 21, 2014).

<sup>2</sup> State’s Response to Discovery Request, ¶9 (Dec. 22, 2014).

<sup>3</sup> 2015 WL 1880591 (Del. Com. Pl. Apr. 23, 2015).

<sup>4</sup> *Id.* at \*5.

## II. Discussion

As a general matter, Delaware trial courts “enjoy broad discretion in determining the appropriate sanction for a discovery violation.”<sup>5</sup> “In exercising this discretion, a court weighs all of the relevant factors, including the reason for the discovery violation and the actual prejudice resulting from it.”<sup>6</sup>

Court of Common Pleas Criminal Rule 16(d)(2) provides, in relevant part:

(2) *Failure to Comply with a Request.* If at any time during the course of proceedings it is brought to the attention of the Court that a party has failed to comply with this rule, the Court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.<sup>7</sup>

Delaware Courts reserve the suppression of further evidence stemming from Rule 16 discovery violations for cases where the State engaged in willful or egregious misconduct and the defendant suffered substantial prejudice from the missing evidence.<sup>8</sup> Further, in instances where the discovery violation does not originate from such misconduct and the evidence is produced within a reasonable time after the oversight is discovered, the appropriate remedy is to grant a continuance request, prevent the State from introducing the evidence, and to allow the defense to utilize the evidence as it deems appropriate.<sup>9</sup>

Here, there is no evidence in the record which suggests willful or egregious misconduct by the State. Additionally, the State represented that it produced the video as soon as it learned it

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<sup>5</sup> *State v. Wright*, 2011 WL 826357, at \*4 (Del. Com. Pl. Feb. 28, 2011), citing *DeJesus v. State*, 655 A.2d 1180, 1207 (Del. 1995).

<sup>6</sup> *Id.*

<sup>7</sup> CCP Crim. R. 16(d)(2).

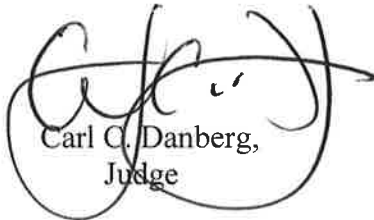
<sup>8</sup> *See, e.g., State v. Wright*, 2011 WL 826357, at \*3 (Del. Com. Pl. Feb. 28, 2011) (the Court suppressed intoxylizer results where Chief of Police repeatedly informed the defense that videos of intoxylization room no longer existed, despite his awareness that the videos were kept longer than the Department policy prescribed).

<sup>9</sup> *See State v. D.M.*, 2012 WL 4849145, at \*2 (Del. Fam. Ct. Aug. 22, 2012) (Court granted a continuance request, prevented the State from using the video, and allowed defense to utilize the video in its favor after the State found a surveillance video during officer testimony, which the officer believed to be lost).

existed. Moreover, on May 20, 2015, the Court granted Defendant three of the four possible remedies for the State's discovery violation. In the Court's view, suppressing the testimony of the investigating officer based on the facts and circumstances before the Court would "grant a windfall to the unprejudiced defendant."<sup>10</sup> As to Defendant's concern that suppressing the DVD, but allowing Corporal Martinez to testify would permit embellishment, the defense has the video available for cross-examination. Finally, Defendant's argument may have been meritorious had Corporal Martinez' testimony been based upon his review of the video. Corporal Martinez' knowledge of the events in this matter originate from his status as the investigating officer, independent of what the DVD shows. Accordingly, the Court orders the following:

- (1) The DVD is suppressed;
- (2) Defendant may utilize the DVD in any manner he sees fit;
- (3) Corporal Martinez may testify; and
- (4) Defendant may introduce the Court's decision in *State v. Bell* upon cross-examination of Corporal Martinez.

**IT IS SO ORDERED** this 9<sup>th</sup> day of July, 2015.



Carl C. Danberg,  
Judge

cc: Diane Healy, Judicial Case Management Supervisor

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<sup>10</sup> *Wright*, at \*4.