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3RD DISTRICT COURT SALT LAKE COUNTY, STATE OF UTAH	
STATE OF UTAH, Plaintiff, vs. JASON CHRISTOPHER HALL, Defendant.	STATE’S MEMORANDUM IN OPPOSITION TO DEFENDANT’S MOTION TO COMPEL Case No. 221906445 Judge: PAUL B. PARKER

STATE OF UTAH, through Steven A. Wuthrich and Heather Waite Grover, Assistant Attorneys General, hereby files the State’s Memorandum in Opposition to Defendant’s Motion to Compel as follows:

SUMMARY OF THE ARGUMENTS

This court should deny Defendant’s Motion to Compel because the State has complied with the mandatory disclosure requirements of Utah Rule of Criminal Procedure 16 by disclosing a copy of the evidence and making the original evidence available for inspection. The State has properly requested information prior to allowing Defendant’s expert to test the evidence because it is the same information that Defendant is obligated to disclose under Utah Rule of Civil

Procedure 26(A)(4). Furthermore, Defendant is not entitled to have his designated expert test, and thereby partially consume and permanently alter, material evidence without first making a showing that the test results are “critical evidence” and subject to varying expert opinions. Finally, even if Defendant’s expert is permitted to test the evidence, Defendant must observe appropriate safeguards that are either agreed to by the State or imposed by the Court.¹

STATEMENT OF MATERIAL FACTS

1. On June 30, 2022, the State filed an Information against Defendant charging him three violations of law (ECF No. 1).
2. These charges were based, in part, on a series of letters that contained threats against the alleged victim.
3. The letters were not handwritten, rather, they appeared to be typed on a computer (or similar device) and then printed.
4. The State served initial disclosures on Defendant’s counsel on July 19, 2022.
5. For the initial disclosures, the State made a copy of the letters that it contends Defendant sent to the alleged victim.
6. Around August 4, 2022, after receiving copies of the letters, Defendant complained about the quality of the copies.
7. The State provided a new copy of the letters, attempting to address Defendant’s concern about the quality of his copy; this new copy was provided in the State’s Sixth Supplemental Disclosure (ECF No. 33).

¹ Subsequent to the filing of their Motion, Defendant has maintained their motion is really a Statement of Discovery Issues. This is incorrect. Their motion on its face is styled as a Motion to Compel pursuant to Rule 16 of the Utah Rules of Criminal Procedure. The Motion contains no certification of having satisfied the meet and greet pre-requisites nor is it limited to 4 pages. Finally, there is no discussion of proportionality. *See*, Utah R. Civ. P. Rule 37.

8. Defendant still had complaints about the quality of the new copy of the letters he received.
9. On October 7, 2022, the State agreed that the Defendant could take his own pictures of the letters.
10. The State arranged for Defendant to photograph one item, which was stored at the State's investigative unit's headquarters on College Drive in Murray, Utah.
11. The State also arranged for Defendant's representatives to photograph the remaining documents, which were stored at the Bluffdale Police Department Evidence Room in Bluffdale, Utah.
12. The State did not require Defendant to disclose the name of the photographer that would be handling the photographing of the original letters, nor did it demand why higher resolution pictures were needed.
13. When the State informed the investigator, Thomas Russell, that he needed to make the original letters available for Defendant's representatives to photograph, the investigator expressed concerns about contamination of the letters. *See Exhibit A, Declaration of Thomas Russell.*
14. The investigator had a conversation with State's counsel regarding how to allow inspection and copying without risking contamination.
15. The investigator and State counsel determined that the letters should be placed vertically on an easel approximately an arm's length away from the place that Defendant's representatives would take their own photographs of the letters, and this change would prevent contamination while allowing copying and inspection.

16. October 12, 2022, Defendant and his representatives went to the two locations that held the evidence and took photographs of the evidence.
17. October 13, 2022, Defendant requested copies of all videos maintained by the State of the picture taking procedure. State did not record same at College Drive but recently learned one officer at Saratoga Springs evidence room was wearing a body cam.
18. Defense counsel later complained they were not allowed to take the pictures standing over the evidence with their camera facing down while the letters were placed on a flat surface, such as a desktop or tabletop.
19. On October 17, 2022, Defendant provided the State with copies of the pictures of the evidence that his representatives took.
20. Other than the complaint about the angle of taking the pictures, the State was unaware the defense had any grievance with the access that was granted them.
21. Defendant has not identified any problem created by the State placing the letters in a horizontal position during the process of rephotographing.
22. The pictures taken by the defense on October 12, 2022, appear no different to the naked eye than the original copies provided by the State.
23. Later, Defendant requested that the State allow his expert to physically examine and test the original letters.
24. In turn, the State requested additional information regarding the expert: his CV, the purposes of his examination, the potential results, the specific documents to be examined, the methodologies employed by the expert, protocols to be used to protect the documents, estimated time of the examination, and the identity of laboratories or other

forensics involved in the examination.

25. Defendant provided the State with some, but not all, of the requested information.
26. Defendant provided the State with the expert's name, the identity of the documents to be examined, a short description of the methodologies and protocols, an estimated time, and the identity of a laboratory.
27. Defendant explained that the chemical testing he wished to do would require making tiny holes in the letters.
28. The Defendant explained that the examination may allow the expert to identify the type of paper, ink, and brand of printer used to create the letters.
29. The Defendant did not provide the expert's CV, nor did he provide a sufficiently detailed explanation of the methodologies.
30. Most critically, Defendant did not explain why the identity of the particular paper, ink, and printer was relevant to his defense.
31. On September 18, 2023, Defendant filed a Motion to Compel, asking the court to order the State to allow Defendant's expert to examine and test these letters, including making tiny holes in the letters.
32. Despite early promises of providing the identity of defense witnesses to the State, the defense refused same.
33. The State filed a Motion for Reciprocal Discovery on March 7, 2023 (Motion For Good Cause Disclosures, ECF No. 144), and Defendant filed his opposing brief on March 14, 2023 (Reply Defendants Response to Motion for Good Cause Disclosures, ECF No. 146), arguing the State didn't show material need for the discovery and that defendant's

strategy might change. Defendant's position was, and remains to this date, that the language in Utah R. Crim. P. 16 "as soon as practicable" means less than 14 days prior to trial not greater than 14 days.²

34. To date the State has supplemented its discovery some 15 times, making sure defendant is advised as each witness of potential witness is interviewed and recorded. While not every one of said witnesses will be called at trial, Defendant is fully apprised of their potential testimony.
35. On July 17, 2023, the Court orally ordered Defendant provide reciprocal discovery by August 31, 2023. Despite the Court's Order, the defendant refused to provide its anticipated witnesses. *See* Exhibit B.
36. The Court should be aware there exists in a companion civil proceeding filed by the victim in this against defendant, his wife Natalie Hall, Defendant's business and others including Bluffdale City Gaston v. Hall, Third District Court Case no. 230905528.

ARGUMENT AND AUTHORITIES

1. THE STATE HAS SATISFIED THE MANDATORY DISCOVERY REQUIREMENTS OF THE UTAH RULE OF CRIMINAL PROCEDURE 16.

Contrary to Defendant's assertion, the State has met its disclosure obligations. Under Utah Rule of Criminal Procedure 16(a), "a prosecutor must disclose to the defendant . . . material or information directly related to the case," including, "physical evidence." Utah Rule of Criminal Procedure 16(c) permits a prosecutor to "make a disclosure by notifying the opposing

² During settlement negotiations, Defendant finally disclosed three potential witnesses which have been interviewed by the State's agent.

party that material and information may be inspected, tested, or copied at specified reasonable times and places.”

The State has fulfilled its obligations under Rule 16 in two ways. First, the State sent a copy of the physical evidence, the letters, to Defendant. Second, the State allowed Defendant and his representatives to personally inspect and take copies of the letters. For that inspection, the State mounted the letters on an easel and allowed Defendant’s representatives to take photographs at arm’s length, no more than a three-foot distance. The State did this to avoid contamination, such as DNA contamination, of the evidence that might occur if the letters were placed on a tabletop and the photographer leaned over the document to take a photograph from above.

Defendant therefore has received the evidence that must be disclosed. His motion to compel is not about undisclosed evidence. With this motion, Defendant is making a request for something other than disclosure: He is requesting permission to have a purported expert witness test, and thereby partially consume and permanently alter, the physical evidence that he has inspected and copied.

2. DEFENDANT MUST DISCLOSE INFORMATION REQUESTED BY THE STATE REGARDING HIS EXPERT BECAUSE IT IS ALSO INFORMATION THAT UTAH RULE OF CIVIL PROCEDURE 26(A)(4)(A) REQUIRES HIM TO DISCLOSE.

While Defendant casts the State’s request for information as excessive, most of the requested information is the same information Defendant must disclose under the Utah Rules of Civil Procedure, regardless of a request to have the expert independently test evidence. Utah Rule of Civil Procedure 26(4)(A) requires a party employing an expert to disclose specific

information to the other party “without waiting for a discovery request.” This information includes:

(i) the expert’s name and qualifications, including a list of all publications authored within the preceding 10 years, and a list of any other cases in which the expert has testified as an expert at trial or by deposition within the preceding four years, (ii) a brief summary of the opinions to which the witness is expected to testify, (iii) the facts, data, and other information specific to the case that will be relied upon by the witness in forming those opinions, and (iv) the compensation to be paid for the witness’s study and testimony.

Id. The Advisory Committee Notes to Rule 26 also explain that “[t]he file should include all of the facts and data that the expert has relied upon in forming the expert’s opinions.” If an expert report is given, it must contain a “complete statement of all opinions the expert will express and the basis and reasons for them.” Additionally, the Utah Rules of Civil Procedure place the “burden of showing proportionality and relevance” of evidence that is requested on the party seeking discovery. Utah R. Civ. P. 26(b)(3).

An expert’s name, a description of qualifications, and a list of publications authored, or prior testimony given is exactly the type of information contained in a curricula vitae. A summary of the opinions or facts, data and other information relates directly to the purpose of the expert’s examination of evidence and the potential or anticipated results of the testing. “All of the facts and data . . . relied upon informing the expert’s opinion” speaks to methodologies used by an expert. The relevance of the evidence Defendant wishes to discover is also directly related to the purpose of the examination: why do the test results matter to this case?

In the absence of Defendant’s disclosure, the State has done its own research to better understand Defendant’s proposed expert’s qualifications, methodologies, and likely opinions. An online review of Defendant’s proposed expert, Gerald LaPorte, shows that he works in the “field

of questioned documents” <https://www.rileywelch.com/gerald-laporte/>. Specifically, he is a “Forensic Chemist and Document Dating specialist,” with “specialization in the area of ink and paper analysis.” *Id.* He has testified in four cases³ that the State could identify. His testimony in those cases focused on paper age and type, ink age and type, printer type, and font type.

While it is presumed that Defendant’s expert could tell us the paper, ink and printer type, Defendant has not yet met his burden to show what purpose or relevance that information has to the present case.

3. DEFENDANT IS NOT ENTITLED TO TEST AND ALTER MATERIAL EVIDENCE WITHOUT FIRST DEMONSTRATING THAT THE TEST RESULTS ARE CRITICAL EVIDENCE AND THAT EXPERT OPINION ON THE RESULTS VARIES, OR, SECOND, WITHOUT OBSERVING APPROPRIATE SAFEGUARDS IN THE TESTING PROCEDURES.

Fundamental fairness does not give Defendant unfettered access to test evidence without first showing that the testing is critical and subject to varying expert opinion, and then, when permitted to test, he must observe appropriate safeguards either agreed to by prosecutor or imposed by the court. In *State v. Bakalov*, 1999 UT 45, 979 P.2d 799, the Utah Supreme Court used a two-step analysis to determine whether a defendant’s due process rights were violated when the court denied his request to test physical evidence held by the state. First, the supreme court examined whether the evidence obtained from the test was “critical” in nature and “subject to varying expert opinion.” *Id.* ¶ 52. Second, it evaluated whether “the condition for testing imposed by the trial court was reasonable.” *Id.* ¶ 54.

³ See *Compania General Financiera Desarrollo, S. A. v BNP Paribas, S.A.*, 320 So. 3d 317 (Fla. Dist. Ct. App. 3d, 2021) reh’g denied (June 9, 2021); *Garcia-Pastrana v. United States*, 2012 WL 706417; *Krekstein v. McDonald’s Corp.*, 341 F.R.D. 575 (E.D. Penn. 2022); *State v. Smith*, 2009 WL 17873.

a. The identity of the printer, ink, and paper is not critical evidence relevant to either the prosecution or defense.

To date, Defendant has not met his burden of showing that the testing he requests will produce critical and relevant evidence, nor has he shown that it is evidence subject to varying expert opinions. “Critical evidence is material evidence of substantial probative force that could induce a reasonable doubt in the minds of enough jurors to avoid a conviction.” *Id.* ¶ 52 (internal quotation marks and citations omitted). For independent test results to be deemed “critical evidence,” a defendant may need to affirmatively provide background information that is not known by the state. *Id.* This background information can provide a “nexus to connect the [test results] to [the defendant].” *Id.*

For example, in *Bakalov*, the Defendant accused of rape wanted an independent test of a semen sample that the state had collected as evidence. *Id.* However, because Defendant did not provide a blood sample, “the State [was] prevented from matching his blood with the semen contained in the sample.” *Id.* “As a result, [an independent test of] the sample [was] not critical to a determination of [the defendant]’s guilt or innocence.” *Id.*

Here, Defendant has not shown why the test results – the identity of printer, ink, and paper type used to create the letters – are critical evidence. Identifying a printer brand, ink type, or paper type does not implicate nor does it exonerate Defendant. Defendant has not disclosed background information regarding the types of printers, inks, or paper to which he had ready access. Again, the widespread availability of printers, ink, and paper at a variety of public and private locations makes it nearly impossible to prove or disprove that Defendant had access or no access to whatever type of printer, ink, or paper produced the letters. The identity of the printer, ink, and paper type thus is not critical to a determination of Defendant’s guilt or innocence.

b. Defendant has not shown that expert opinions on the subject of printer type, ink, or paper vary.

At this point, it is not clear that expert opinions as to printer, ink, or paper type of the letters varies at all. Defendant has not addressed this issue in any way. In fact, Defendant has not identified any suspicious characteristics regarding the letters beyond a theory propounded at the preliminary hearing that this was a “Jussie Smollett” case: a case where the victim faked a crime against himself.⁴

The State has not asserted that Defendant is responsible for the letters because of the letter’s paper, ink, or printer type. The State has made no claims about exactly when or how the letters were created. The State has only made claims about who caused them to be sent to the victim. The State is arguing that Defendant authored and sent those printed letters because of evidence that the State believes shows that Defendant sent four emails with similar wording as the printed letters, asked an associate to mail multiple packages to Bluffdale City or the victim, and admitted to sending one item to the victim. If the paper, ink, or printer type vary, that does not eliminate the State’s theory of authorship. The State’s theory contemplates the possibility that any variety of printers, ink, and paper may have been used by a single person.

c. The court and the prosecution are entitled to additional information to set parameters for testing to preserve the integrity of the evidence.

⁴ As emphasized at the preliminary hearing, the victim took no steps to publicize the threats. He turned them over to police but made no press release or attempts at political advantage therefrom, which is in opposite to the Smollett case.

Even if this court were to determine that the information gained from the testing was critical and subject to varying expert opinion, the court would be within the wide discretion afforded it to impose conditions on the testing to preserve the integrity of the evidence. In general, “[a] trial court is granted broad discretion to admit or deny discovery under . . . rule [16 of the Utah Rules of Criminal Procedure].” *State v. Mickelson*, 848 P.2d 677, 687 (Utah Ct. App. 1992). In cases where fundamental fairness requires an opportunity to have an expert chosen by the defendant examine critical evidence, the Utah Supreme Court has insisted that a Defendant is still “bound by appropriate safeguards imposed by the [trial c]ourt.” *Bakalov*, 1999 UT 45, ¶ 52. Safeguards can include preconditions, such as a Defendant providing information, “geared to assur[e] the relevance of the . . . testing [that a defendant requested].” *Id.* ¶ 54.

While Defendant has provided some information about his expert, Defendant has not provided enough information to determine whether and which preconditions should be imposed prior to any testing. Defendant has provided the name of the expert that will conduct the testing, the laboratory he will use, and a brief description of the methodology the expert will use. That description only provides the most general explanation of the testing: “physical, optical and chemical testing via a thin layer of chromatography and gas chromatography/mass spectrometry.” He has not identified the purpose of the testing or the results he expects to find, except that it will identify paper, ink, and printer type.

While Defendant treats the State’s response to his request as nothing more than obstructive litigation techniques, it cannot be forgotten that the State’s duty to disclose material evidence encompasses a duty to preserve such evidence. *See generally State v. DeJesus*, 2017 UT 22, 395 P.3d 111. Lost or destroyed evidence has the potential to contain exculpatory

evidence, and the destruction of such evidence can constitute a violation of due process. *See State v. Steele*, 2019 UT App 71, ¶ 27, 442 P.3d 1204; *DeJesus*, 2017 UT 22, ¶ 32 n. 39 (citing *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988)). Because “[i]t is the State’s duty to preserve relevant evidence, . . . it cannot escape that duty – or the consequences of its breach of that duty – simply by putting on evidence as to what the lost evidence would have shown.” *DeJesus*, 2017 UT 22, ¶ 44 n. 62. In short, the decision to allow any testing that consumes or alters even a portion of evidence to be presented at trial should be made fully informed and without haste.

CONCLUSION

Defendant’s Motion to Compel should be denied. The State has satisfied its rule 16 discovery obligations. Furthermore, to the extent Defendant is making a motion to compel testing by his expert witness, that motion should be denied. Defendant has not satisfied its disclosure obligations regarding its expert witness. Defendant has not met his burden to prove that the test results will produce critical evidence. And neither the court nor the State has sufficient information to determine what parameters, if any, need to be placed on such testing.

DATED: September 25, 2023

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing to be served on the following via the court's e-filing system.

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