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**DEFENDER**

**BRIGGS COUNTY OFFICE OF THE PUBLIC**

**502 ALLEGHANY STREET**

**MARTINSVILLE, COLUMBIA**

**TO: ASSISTANT PUBLIC DEFENDER ARMANDO GOMEZ**

**FROM: APPLICANT**

**DATE: FEB 24,2026**

**RE: STATE OF COLUMBIA V. JOHN DAVIS, ET AL.**

**BRIEF**

Mr. Gomez as you instructed i prepared a brief in support of Mr. Davis's motion in limine and i addressed to the applicability of the original document rule which requires original text messages to be submitted into evidence.

**1. The Officer Relied on The Text Messages To Testify To Prove Mr. Davis's Guilt Without The Original Document**

Columbia Rule of Evidence (CRE) 1002 provides " An original writing, recording or photograph is required in order to prove its content, unless these rules provide otherwise."

Application of the "original document rule" requires a resolution of the question whether contents of the documents are sought to be proved. An event may be proved by non-documentary evidence, even though a written record of it was made, If, however, the event is sought to be proved by the written record, the rule applies. If reference to written receipt is relied upon by witness, the receipt must be produced or properly excused under CER 1004. If testimony attempts to prove the contents of the document, such testimony is not admissible unless the original document is provided or an acceptable explanation for its absence is given. Where the testimony merely states a fact about the writing, then the challenged testimony is admissible.

In Jones, the prosecution relied upon detective's notes and his testimony about the emails between Jones and her co-conspirator solely to prove that the two women were in co on with one another during the relevant period of time. The notes and testimony of the detective were not used for purposes of showing that Jones and her co-conspirator discussed the sale of counterfeit watches , or any other topic for that matter. Thus, the notes

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and testimony at issue were not admitted to prove the content of the emails exchanged between Jones and her co-conspirator.

Here, unlike Jones, the officer Powers gave his testimony relevant to the original documents at issue. Powers claims that the text messages were disappeared due to automatic delete function of the phone after two weeks. However, during the two weeks it does not seem that the government tried to get the text messages printed or any other reasonable meaning of duplicate to reproduce the original with mechanical or electronic technique. Moreover, Powers states that the transcripts are relatively accurate since he was doing some other things while he was transcribing the documents.

Thus his testimony may be probative, is not reliable to prove the contents of the original text messages.

## **2. Government's Negligence Regarding to Unavailable Original Document**

Columbia Rule of Evidence (CRE) 1002 provides " An original writing, recording or photograph is required in order to prove its content, unless these rules provide otherwise."

Also CRE rule 1004 states that " An original is not required and other evidence of the content of a writing, recording or photograph is admissible if all the originals are lost or destroyed, and not by the proponent acting in bad faith; an original cannot be obtained by any available judicial process; or the writing, recording or photograph is not closely related to a controlling issue.

When criminal evidence is lost or destroyed, the court must protect a number of interest. The main concern is to provide the accused to have an opportunity to examine all relevant evidence. The degree of government fault is relevant. The court must balance the quality of the government's conduct against the degree of the prejudice to the accused. The government bears the burden of justifying its conduct, and the defendant bears the burden of demonstrating prejudice. In reviewing the conduct of the government, the court should consider whether the evidence was lost or destroyed while in its custody, whether the government acted in disregard for the interest of the accused, whether it was negligent in failing to adhere to reasonable standards of care for police and prosecutorial functions, and if the acts were deliberate, whether they were taken in good faith or with reasonable justification.

In Grimes, the state sought to prove the existence and content of negotiable instruments allegedly found in Grime's car through the use of photographs of those documents, because the original documents inexplicably disappeared while in police custody. Moreover, State was unable to meet its burden of justifying its conduct since it offered no explanation for when or how the checks were disappeared.

Here, like in Grimes, the original text messages were disappeared during it was in government's custody while it was in the evidence locker at the police station. Moreover, Powers is trying to prove that the messages between Mr. Davis and Cameron constitutes conspiracy to distribute the drugs which is central of the issue. As a government officer, Powers cannot justifiably burden of its conduct by not taking reasonable care by not getting duplicates of the text messages during two week period. Moreover, Powers admits that nobody at his department has training how to handle the electronic evidence like text messages and

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everybody handles the things on their own ways.

Thus the government failed to meet its burden to prove its conduct justifiably.

### **3. There is substantial Risk of Prejudice on Mr. Davis in Absence of Original Text Messages**

In analyzing the degree of prejudice to the defendant, the court must consider a wide number of factors, including (1) the centrality of the evidence to the case and its importance in establishing the elements of the crime, including motive, intent (2) the reliability of secondary or substitute evidence; and (3) the probable effect on the jury in absence of original.

In *Grimes*, he met his burden of demonstrating prejudice based on unavailability of the original documents. The traveler checks are central to the theft charges and the five photographs in which the State relies are neither probative or reliable.

Here, Like in *Grimes*, Mr. Davis will also be highly prejudiced since the centrality of the evidence to the case is the text messages to prove conspiracy to distribution of C. Further, as discussed above, the officer Powers' testimony is not reliable since the original is not available in negligence of the police station although it might be probative. It is likely that the jury will be prejudiced by only reading the transcript showing Mr. Davis's allegedly messages with Cameron talking about substance C.

Therefore, the original documents rule must be apply to this case to prove Mr. Davis's alleged conspiracy over text messages.

Thank you for letting me to conduct this brief for you. Please do not hesitate to contact me if you have any question.

Applicant

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