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BRIGGS COUNTY OFFICE OF THE PUBLIC DEFENDER

502 Alleghany Street

Martinsville, Columbia 12345

To: Assistant Public Defender Armando Gomez

From: Applicant

Date: February 24, 2026

Re: State of Columbia v. John Davis, et al.

I. Introduction

Assistant Public Defender Armando Gomez, I have prepared a brief in support of John Davis ("Mr. Davis") motion *in limine* that addresses the applicability of the original document rule pertaining to the introduction of a handwritten transcript of text message between Mr. Davis and his former girlfriend, Sally Cameron ("Ms. Cameron"), that addresses Mr. Davis' charge, conspiracy to distribute cocaine. Additionally, I've presented legal arguments supporting our request to exclude the handwritten transcript of text message between Mr. Davis and Sally Cameron. Please let me know if there is anything further you'd like me to draft.

II. The handwritten transcript of text messages taken by Officer Robert Powers must be excluded because they are not the original text messages and are being used to prove that Mr. Davis' charge of conspiracy.

An original writing, recording of a photograph is required in order to prove its content, unless an exception applies. (*Columbia Rule of Evidence 1002*). For electronically stored information, "original" means any printout - or other output readable by sight - if it accurately reflects the information. (*Columbia Rule of Evidence 1001*). Application of the "original document rule" requires a resolution of the question whether the 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 original document rule applies. (*State v. Columbia v. Susan Jones*). If, however, reference to the written receipt is relied upon by a witness, the receipt must be produced or properly excused under Columbia Rule of Evidence 1004. *Id.* The rule does not apply to testimony that books or records have been examined and found not to contain any reference to a designated matter. *Id.* In order to obtain a conviction of conspiracy, the State must show that a conspiracy existed and that the defendant agreed to participate in it, intending to commit the underlying substantive offense of distributing cocaine. The elements of a conspiracy are an agreement between two or more persons to commit a crime and an overt act by one of them in furtherance of the agreement. (*Columbia Criminal Code*).

Here, Mr. Davis has been charged with the crime of conspiracy and the State plans to reply on a serious of text messages between Mr. Davis and Ms. Cameron in order to prove that they

conspired together to distribute cocaine. However, because the State contends per Officer Powers testimony on January 24, 2026 that the State no longer has access to Ms. Cameron's cell-phone and no printout or other readable output of these text messages was taken before they were deleted, Officer Powers' written notes are not permitted to be used to prove the crime of conspiracy because the original document is required to prove its contents. While we understand that Officer Powers' has stated in his transcript that their office was not able to print out the messages or make an electronic copy of them because he "wouldn't even know how to do that with a phone" that excuse alone is not enough to not provide a printout of the text messages that the State intends to rely on to prove that Mr. Davis has committed the crime of conspiracy. As outlined in the Columbia Criminal Code, the State holds a high burden of proving beyond a reasonable doubt that Mr. Davis made an agreement with Ms. Cameron to commit a crime and an overt act was taken to further this agreement which simply cannot be proved by notes taken by Officer Power because they are self-serving for the State. The State themselves have contended that these text messages will show that Ms. Cameron routinely connected Mr. Davis with individuals wishing to purchase cocaine, and that Mr. Davis then met with the buyers at a predetermined location to carry out the sale because these statements clearly outline the elements required to prove conspiracy the original document, in this case, the original text messages are required.

In the case of *State of Columbia v. Susan Jones*, the court held that because the prosecution relied upon the detective's notes and his testimony about the defendant and her conspirator to prove that the two women were in communication with one another during the relevant period of time they were permitted because they did not prove the crime of conspiracy. This case is different from our case at chief because the State in Mr. Davis' case is attempting to use text messages between him and Ms. Cameron to prove that the crime of conspiracy.

Thus, the handwritten transcript of text messages taken by Officer Robert Powers must be excluded because they are not the original text messages and are being used to prove that Mr. Davis' charge of conspiracy.

III. The handwritten transcript of text messages taken by Officer Robert Powers must be excluded because the State was was negligent in failing to adhere to reasonable standards of care for police and prosecutorial functions and Mr. Davis has proven the prejudice of introducing these documents is too high.

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if: (a) all the originals are lost or destroyed, and not by the proponent acting in bad faith; (b) an original cannot be obtained by any available judicial process; (c)...;or; (d) the writing, recording, or photography is not closely related to a controlling issue. *Columbia Rule of Evidence 1004 (a-d)*. When criminal evidence is lost or destroyed, the court must protect a number of interests such as providing the accused an opportunity to produce and examine all relevant evidence, to ensure a fair trial. (*State of Columbia v. Brain Grimes*). The degree of prejudice to the defendant from loss or destruction of the evidence must be weighed, along with any intentional or culpable government action that has caused the loss or destruction and the degree of government fault is relevant. *Id.* The government bears the burden of justifying its conduct, and the defendant bears the burden of demonstrating prejudice. *Id.* 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 interests 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. *Id.* 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 or intent; (2) the reliability of secondary or substitute evidence, and (3) the probable effect on the jury from absence of the evidence. *Id.*

Here, because the text messages are no longer accessible and have been deleted, the State bears the burden of justifying their conduct in not printing out or producing at the very least a screenshot of the text messages and Mr. Davis bears the burden of proving prejudice. The government will review that evidence was lost while in custody of the State because it was in the evidence locker at the police station when the text messages were deleted. Furthermore, the State was negligent in failing to adhere to reasonable standards of care police and prosecutorial functions because first Officer Powers worked on it over the course of two days and not giving it his undivided immediate attention. Officer Powers stated in his transcript that he was too busy at his desk because of "phone calls, meetings, people coming by my desk to ask me about something or other." Additionally, while initially Officer Powers stated that he when he made the transcript of all the messages he wrote down each of them word for word with the dates, which is evident on the copy of transcript but when later he was asked about them he said he tried his best to keep track and make sure he didn't miss anything that seemed important, these are two conflicting statements. Finally, negligence can be proven because Officer Powers himself admitted never printing out text messages as part of their standard procedure as there is no way for them to figure out. Officer Powers even admitted that "everyone in my department pretty much has to figure these things out for themselves. These new technologies change so often, you know." If Mr. Davis is to be charged with the crime of conspiracy then it cannot be done through a standard procedure that is being negligently used because prejudice for our client is simply too high.

A. The centrality of the evidence to the case and its importance in establishing the elements of the crime, including motive or intent.

Here, the centrality of the text messages to the case and its importance in establishing the elements of the crime including specific intent is vital because the State has no other proof but the text message that our client allegedly committed this crime. The text messages range over a course of less than a month and include even the informant's name, they include mentions of other clients and references to the possibility of cocaine through words such as "blow, stuff from down south, snow, and a big snow storm, and where clients can meet Mr. Davis. These also show that Mr. Davis and Ms. Cameron were arranging to meet clients in certain places and Ms. Cameron was sending clients to Mr. Davis. Therefore, the centrality of the evidence to the case is high.

B. The reliability of secondary or substitute evidence.

Here, the reliability of Mr. Power's notes is not acceptable because they were kept during a negligent procedure as administered at the police department. Additionally, as stated above Mr. Powers took these notes over a course of a few days when he was duly distracted and not in one sitting. Also, there is no way to prove that this is exactly what was stated in the texts because the service provide no longer has the messages stored in its servers, Mr. Davis no longer has access to the texts, and the State never subpoenaed the text messages from any other source. Therefore, the reliability of Mr. Powers' notes is low.

C. The probable effect on the jury from absence of the evidence.

Here, the probable effect on the jury from the absence of the text messages is high because there is no other method from the State besides informant Betty's testimony that Mr. Davis is guilty of the crime of conspiracy. Therefore, the probable effect on the jury from the absence of the evidence is high.

Finally, in the case of *State of Columbia v. Brian Grimes*, the court found that the defendant met the burden of demonstrating prejudice because the evidence was central to the theft crimes in the defendant's case, the secondary photographs were not reliable, and the State did not offer any explanation on how the evidence disappeared. This case is similar to ours because Mr. Davis' has met the burden of being prejudiced through the introduction of these photographs.

Thus, the handwritten transcript of text messages taken by Officer Robert Powers must be excluded because the State was negligent in failing to adhere to reasonable standards of care for police and prosecutorial functions and Mr. Davis has proven the prejudice of introducing these documents is too high.

IV. Conclusion

For these reasons, Mr. Davis has demonstrated that Officer Power's handwritten transcript of text message between Mr. Davis and Ms. Cameron must be excluded because they are not the original document and he has proven that he will be prejudiced through the introduction of this material.

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