

STATE OF MAINE)
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)
)
v.)
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)
Kathy Cagle,)
Defendant.)

Order on Motion for Sanctions

The court heard or argument on this motion on this date. After careful consideration the court rules as follows:

The issue involves a recorded interview with a co-defendant Emily Walker which involved both a discussion of her involvement with this charge as well as debriefing regarding other criminal matters. The video portion related to this charge was preserved and supplied to the defense. The remainder of the debriefing was written over on the dvr system pursuant to the Waterville PD retention policy although written notes were made of it for other cases. This was despite a retention letter from the defense.

After hearing from Officer Gordon, the court concludes the writing over the recording was not done intentionally to avoid discovery but was likely accidental.

Moreover, the court is not convinced that the material was discoverable. At this juncture, Ms. Walker is not an yet a witness for the state as she remains a defendant.

Giglio only applies to persons intended as witnesses. Officer Gordon may well have had discussions with Ms. Sawyer regarding her own drug use and relationships which would be potentially *Giglio* material if she becomes a State's witness.

It is therefore ordered:

1. State shall review the other activity debriefing notes or reports and shall turn over any *Brady* material.
2. State shall indicate at June dispositional conference whether it intends to use Ms. Sawyer as a witness.
3. If so, shall provide all *Giglio* material including but not limited to promises and inducements, the material in the debriefing related to drug use, drug activity, personal relationships with alleged drug traffickers.
4. State shall provide any written record of portions of debriefing written over by dvr process if Ms Sawyer is witness.

5. Defendant may request of trial justice spoliation of evidence instruction but that decision reserved to trial court.

The clerk may docket as " Motion for sanctions granted in part/ denied in part.

Dated: April 24, 2018



JUSTICE, MAINE SUPERIOR COURT
