STATE OF INDIANA	)	IN THE MONROE CIRCUIT COURT
	) SS:	
COUNTY OF MONROE	)	CAUSE NO. 53C06-2407-PL-001733

STATE OF INDIANA *ex rel.* TODD ROKITA, ATTORNEY GENERAL OF INDIANA,	)
	)
Plaintiff,	)
	)
v.	)
	)
RUBEN MARTÉ, in his official capacity as MONROE COUNTY SHERIFF and MONROE COUNTY SHERIFF'S OFFICE,	)
	)
Defendants.	)

PLAINTIFF'S REPLY IN FURTHER SUPPORT OF PLAINTIFF'S MOTION TO EXCLUDE EVIDENCE OUTSIDE THE PLEADING IN CONSIDERING DEFENDANTS' MOTION TO DISMISS

Considering the evidence outside the complaint in deciding Defendants' motion to dismiss or converting the motion to dismiss into a motion for summary judgment would impermissibly truncate the normal amendment process for pleadings. And even if the Court were nonetheless inclined to consider this evidence, Plaintiff should be afforded a reasonable opportunity to present all material pertinent to the converted motion for summary judgment under Indiana Trial Rules 12(B) and 56. None of Defendants' attempts to deprive the State of this reasonable opportunity is persuasive.

I. The State Should Not Be Deprived of the Opportunity to Amend Its Complaint.

The only substantive argument that Defendants advance in favor of converting their motion to dismiss is that "[n]o possible amendment of Plaintiff's complaint could

change the pure questions of law on which this case will be decided." Oppn. at 6. That argument, however, is at odds with Defendants' own previous arguments. It cannot be squared with Defendants' insistence in their motion to dismiss that Plaintiff's Complaint lacks sufficiently "specific allegations" and thus leaves Defendants "in the dark about the fundamentals of the plaintiff's claim," Defs.' MTD Br. at 11—supposed defects that Plaintiff contests, but which could plainly be cured by an amended complaint if the Court sides with the Defendants.

The argument is also contrary to Defendants' insistence that Sheriff Marté did not intentionally or knowingly violate Indiana law by promulgating MCSO-12 because he "follow[ed] his best understanding of an ambiguous law" and allegedly took into account Plaintiff's objections to the prior version of MCSO-12 in revising the policy. *Id.* at 47–48. In their motion to dismiss, Defendants themselves have contended that establishing the knowledge or intent requirement of Indiana Code § 5-2-18.2-6 requires a factual determination of whether Sheriff Marté engaged in an intentional or knowing effort to violate Indiana law, *id.*—a position they have now apparently abandoned. And in any event, while Plaintiff has explained why the Complaint's allegations *are* sufficient, *see* Pl.'s MTD Oppn. at 38–40, and why establishing intent or knowledge "does not require knowledge that the act is in violation of the law or the intent to violate a statutory provision," *Bd. of Cnty. Comm'rs v. Tinkham*, 491 N.E.2d 578, 582 (Ind. Ct. Ap. 1986); *see also* Pl.'s MTD Oppn. at 41–42, should the Court disagree, Plaintiff must have the opportunity to

amend the Complaint to conform to the Court's determinations, *see* Indiana Trial Rule 12(B).

II. The State Should Not Be Deprived of the Opportunity to Gather and Present Relevant Responsive Evidence.

Much of the rest of Defendants' opposition advances several arguments why Plaintiff should not be given an opportunity to respond to the extrinsic evidence they presented in their motion. None is persuasive.

First, Defendants contrive a formalistic argument based on the timing of Plaintiff's opposition to their brief. They point out that Plaintiff obtained an extension of time to oppose Defendants' motion—an extension of the motion to dismiss opposition brief deadline and an extension of the motion for summary judgment opposition brief deadline—and they then note that Plaintiff filed only one opposition brief on the extended deadline. Oppn. at 2. Based on the extended deadline and the State's decision to file a single response, Defendants implicitly argue that Plaintiff should not be given any opportunity to respond to Defendants' extrinsic evidence if the Court considers it. There is nothing to this. Plaintiff requested an extension to obtain the time necessary to draft its opposition, which the Court granted, and after reviewing Defendants' filings in depth and researching the relevant statutes and cases, Plaintiff determined that Defendants' motion was a motion to dismiss with an alternative request to convert to a motion for summary judgment and therefore filed one brief opposing that motion. Nothing in the State's request for an extension, or its decision to file a single brief after review of the motion, somehow forfeited or otherwise precluded Plaintiff's ultimate determination that the motion prematurely

seeks summary judgment—and that the State must be allowed, under the rules, an opportunity to develop and present relevant evidence to oppose Defendants' motion if the Court decides to convert it.

Similar reasoning also disposes of Defendants' argument that the time between the filing of their motion (Sept. 4) to the time when Plaintiff's opposition to Defendants' alleged motion for summary judgment would have been due (Oct. 18) supposedly already provided the State with a reasonable opportunity to respond to their extrinsic evidence. Oppn. at 4. Plaintiff did not (and still does not) know if the Court will even consider the extrinsic evidence that Defendants have submitted. That is why Plaintiff's motion to exclude also requests that the Court specifically state if it is going to consider the evidence and, if so, give Plaintiff a reasonable opportunity to respond to that evidence. It would be a waste of resources for Plaintiff to conduct discovery to obtain evidence to oppose Defendants' evidence if the Court is not going to consider any of that evidence in deciding Defendants' motion.

Second, Defendants advance another argument that the State has forfeited any opportunity to respond to its request for summary judgment based on a revisionist interpretation of their motion, arguing that they invoked *both* Rule 12 and Rule 56 and sought relief under both rules. Oppn. at 2–3. By only filing a single brief opposing dismissal, the theory goes, the State implicitly acceded to summary judgment. This argument fails twice over. First, Defendants did *not* file two separate motions—one for dismissal under Rule 12 and one for summary judgment under Rule 56—as this argument supposes. Rather, they filed a single motion for dismissal that *incorporated*

a request for summary judgment in the alternative. Defendants' memorandum in support of the motion makes this clear: in that brief, Defendants insisted that "this matter can be resolved solely on the insufficiency of the complaint," and then, in the alternative, moved for summary judgment—explicitly citing Indiana Trial Rule 12(B), which allows a Court to convert a motion to dismiss to a motion for summary judgment when evidence outside the complaint is submitted and not excluded by the Court. Defs.' MTD Br. at 9.[1] In any event, while the State did not file two separate response briefs (just as Defendants did not file two separate *supporting* briefs), the State's brief *did* clearly and repeatedly oppose *both* dismissal *and* summary judgment. Pl.'s MTD Oppn. at 8–10, 44–45. The notion that Plaintiff somehow failed to respond to Defendants' request for summary judgment when Plaintiff's brief said "[s]ummary judgment at this stage would . . . be improper" is risible. *Id.* at 10.

Defendants also maintain that Plaintiff should not be provided an opportunity to take discovery to oppose Defendant's motion because Plaintiff did not provide affidavits that explain why it cannot present "facts essential to justify [its] opposition" and identify the information that would be obtained through discovery that would be material to the opposition. Oppn. at 4–5. But Plaintiff *did* explain, given the

[1] Although Defendants do then cite Rule 56(B), which states that a party may move for summary judgment at any time, Defs.' MTD Br. at 9, read in context, this is a natural cite in support of their request that the Court convert the motion to dismiss to a motion for summary judgment at this time, *i.e.*, that conversion would be appropriate because Defendants submitted extrinsic evidence and the rules allow for summary judgment at any time. The citation does not support interpreting Defendants' motion as including an alternative, separate request for summary judgment under Rule 56.

information available to it at this time, at least some of the discovery it would need to effectively oppose Defendants' motion—including a deposition of Sheriff Marté. Mot. to Excl. ¶ 10.[2] Although Plaintiff's primary argument is that Sheriff Marté's "purported motivations for promulgating MCSO-12 do not affect whether MCSO-12 violates Indiana law," Pl.'s MTD Oppn. at 11 n.1, should the Court disagree on that point, Plaintiff will require deposition testimony from the Sheriff concerning whether his promulgation of MCSO-12 was a knowing or intentional violation of Indiana law (among other potential topics). In addition, Defendants have not yet filed an answer to the Complaint, so it is difficult to accurately predict what discovery Plaintiff will need to take. *See Lanni v. Nat'l Collegiate Athletic Ass'n*, 989 N.E.2d 791, 797 (Ind. Ct. App. 2013) (in reversing trial court for converting a motion to dismiss to a motion for summary judgment without giving the parties a reasonable opportunity to present all materials relevant to the motion for summary judgment, noting that defendant "had yet to file a responsive pleading" to the complaint and thus that plaintiff "was not yet apprised of [defendant's] expected defense and had yet to conduct any discovery"). Plaintiff has thus sufficiently explained what discovery it tentatively

[2] Even one of Defendants' cited cases recognizes that a party does not need to file an affidavit to explain what discovery it seeks that would be material to opposing summary judgment. *See Ludwig v. Ford Motor Co.*, 510 N.E.2d 691, 700 (Ind. Ct. App. 1987) (explaining that plaintiff had not submitted an affidavit under Rule 56(F) "*or otherwise ma[d]e any showing*" that information sought by his discovery requests would be relevant to opposing defendants' motion for summary judgment). Here, Plaintiff's Motion to Exclude and brief in opposition to Defendant's motion to dismiss sufficiently explain, given the information currently available to Plaintiff, what discovery Plaintiff tentatively plans to take to oppose Defendants' motion if the Court converts it to a motion for summary judgment.

plans to take to oppose Defendants' motion if the Court converts it to a motion for summary judgment.

The Court should not allow Defendants to take advantage of a confusingly drafted motion to deprive Plaintiff of the opportunity to amend its complaint or obtain and submit evidence opposing the evidence that Defendants have submitted, if the Court decides to consider it. Accordingly, Plaintiff respectfully requests that the Court grant Plaintiff's motion to exclude and reject Defendants' request to convert Defendants' motion from a motion to dismiss to a motion for summary judgment under Indiana Trial Rule 12(B), exclude the extrinsic evidence that Defendants have submitted, as specified in Plaintiff's moving papers, and grant all other relief that is just and proper.

Respectfully submitted,

THEODORE E. ROKITA
Attorney General
Attorney No. 18857-49

Date: November 12, 2024

By: *s/Aaron M. Ridlen*

Aaron M. Ridlen
Deputy Attorney General
Attorney No. 31481-49

OFFICE OF ATTORNEY GENERAL TODD ROKITA
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Telephone: (317) 232-2826
Facsimile: (317) 232-7979
E-mail: Aaron.Ridlen@atg.in.gov

CERTIFICATE OF SERVICE

I certify that on November 12, 2024, the foregoing document was served upon the following person(s) via IEFS, if Registered Users, or by depositing the foregoing document in the U.S. Mail, first class, postage prepaid, if exempt or non-registered user:

E. Jeff Cockerill
Counsel for Defendants
Monroe County Courthouse
100 W. Kirkwood Avenue
Room 220
Bloomington, IN 47404

Justin D. Roddye
Counsel for Defendants
Monroe County Courthouse
100 W. Kirkwood Avenue
Room 220
Bloomington, IN 47404

Joseph Mead
Counsel for Defendants
600 New Jersey Ave NW
Washington, DC 20001

Alexandre Lichenstein
Counsel for Defendants
600 New Jersey Ave NW
Washington, DC 20001

s/Aaron M. Ridlen
Aaron M. Ridlen
Deputy Attorney General
Attorney No. 31481-49

OFFICE OF ATTORNEY GENERAL TODD ROKITA
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Telephone: (317) 232-2826
Facsimile: (317) 232-7979
E-mail: Aaron.Ridlen@atg.in.gov