

IN THE IOWA DISTRICT COURT FOR STORY COUNTY

<p>STATE OF IOWA,                      Plaintiff,  Vs.  PANIRO JOHNSON,                      Defendant.</p>	<p>CASE No. AGCR062883  COMBINED MOTION TO COMPEL AND MOTION FOR DISCRETIONARY DISCOVERY</p>
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COME NOW the Defendant, by and through his undersigned counsel, and hereby requests that the Court enter an order compelling the State to produce discovery and discretionary discovery in this matter pursuant to Iowa Rule of Criminal Procedure 2.14, by stating as follows:

On September 1, 2023, Mr. Johnson filed a Motion to Produce, and the State produced certain discovery materials in October 2023. Mr. Johnson hereby incorporates his aforementioned motion as if fully set forth herein.

1. The Discovery requested seeks the truth as to the origins of DCI’s investigation in this matter.

2. The Minutes of Testimony provides the State’s proffered explanation as to how the investigation of Mr. Johnson began:

A. Special Agent Brian Sanger – DCI stating that “DCI agents began to identify irregular online/mobile sports wagering activity originating from state universities with athletic teams that regularly participate in sanctioned sports wagering contests routinely listed on licensed online/mobile sports wagering platforms in Iowa.”

3. Depositions in this matter were conducted on January 19, 2024, wherein the State’s own witness—DCI Special Agent Mark Ludwick—testified that the DCI engaged in an illegal search of Iowa student athletes and dozens of others’ online account information, and that he was misled as to the purpose of the investigation by the Special Agents in charge. Specifically:

- A. On the morning of May 2, 2023, Special Agent in Charge Troy Nelson briefed Special Agent Mark Ludwick and other Special Agents regarding their assignments to interview certain Iowa State students about their potential online gaming activities. Special Agent in Charge Nelson conveyed to Special Agent Ludwick and others that the nature of the investigation was purely administrative, with their targets focused on FanDuel, DraftKings, and other online gaming operators.
- B. Special Agent Ludwick interviewed Iowa State football player Isaiah Lee later that morning, reassured Mr. Lee that the focus of DCI's investigation was solely on online gaming operators and that no adverse or criminal consequence would be forthcoming, and thereby secured Mr. Lee's statements regarding his online gaming activities.
- C. Special Agent Ludwick reported his interview to his superior Troy Nelson, who "congratulated" Special Agent Ludwick "for obtaining a confession." Contrary to representations made to him and other Special Agents that morning, Special Agent Ludwick realized the purpose of the investigation was criminal in nature, with the sole targets being male Division I student athletes at the University of Iowa and Iowa State University. Special Agent Ludwick advised his superiors that he would no longer participate in the investigation, and requested reassignment.
- D. As a DCI Special Agent with more than 25 years of criminal investigations ranging from major crimes to illicit gambling activity, Special Agent Mark Ludwick concluded that DCI conducted an illegal search of Iowa student athletes and dozens of others' personal online account information because the agency did not obtain a GeoFence Warrant as well as lacked reasonable, articulable suspicion to conduct such a search. Special Agent Ludwick further testified that he is aware of numerous other Special Agents at the DCI who share the same belief and have refused to participate in this investigation.

4. Due to the lack of information provided, the undersigned requests that the State produce the following information:

- A. Any and all reports to the Iowa Racing and Gaming Commission ("IRGC") regarding suspicions or illegal wagering activities or use of false identification pursuant to 13.2(7)(d). This request applies to all reports involved in the probe of Iowa's Male D1 student athletes as indicated by SA Sanger under Iowa Code 99F.12(4);
- B. All written notifications and reports to the IRGC for any incident where there was violation involving criminal activity, Iowa Code chapter 99F, a commission rule or order, or an internal control pursuant to 13.2(7)(e). This

request applies to all notifications and reports involved in the probe of Iowa's Male D1 athletes as referenced in SA Sanger's deposition testimony under Iowa Code 99F.12(4);

- C. Communications referenced by SA Sanger during his depositions as it relates to each sub-topic identified below including Electronically Stored Files as defined as (ESI for discovery purposes):
  - i. Active data (data readily available to a user) including, but not limited to:
    - Video and/or audio;
    - Word processing and text documents;
    - Spreadsheets;
    - Calendar or scheduling entries;
    - PDF documents;
    - Forms;
    - Notes and collections of text or other data created or assembled by any user, including but not limited to SA Sanger;
    - Presentations including the referenced PowerPoint slide presentation from GeoComply regarding Kibana software;
    - Collaborative documents stored locally or otherwise;
    - Internal reports, memos, interviews, of any confidential informants and other people as it relates to SA Sanger's investigation.
- D. All email communications regarding match fixing and infiltration;
- E. All email communications regarding why the investigation started;
- F. Email to Special Agent Sanger giving him his password for Kibana (with redacted username and password);
- G. Lists of names given to Iowa State and Iowa regarding all potential students or employees deemed to have committed a criminal violation or administrative violation;
- H. All email communications and reports regarding SA Sanger's investigation of the freshmen/sophomore University of Iowa dorm showing online gaming activity, and his superiors communications responding to the same;
- I. All email communications and reports regarding University of Iowa and Iowa State sports facilities targeted, and the reasoning why those were targeted;

- J. Special Agent Sanger's Kibana search history through the date an application for subpoena/warrant to DraftKings was filed with the District Court in Dubuque County; and
- K. PowerPoint presentation emailed from GeoComply to Special Agent Sanger regarding the use of Kibana (mentioned above).

### **AUTHORITIES**

Pursuant to *Brady v. Maryland*, the prosecutor has a constitutional duty of disclosure of evidence. The power and resources of a criminal defendant pale in comparison to those of the State. Consequently, the path to proving innocence must be free of obstructions to accessing evidence. The function of the *Brady* doctrine is the law correcting inequalities between the State and the accused. Therefore, Brady's recognition that due process guarantees equal access to exculpatory evidence lessens the inequality between the resources and power of the State and those of a criminal defendant. Furthermore, the County Attorney has an ethical duty to "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense. . . ." Iowa R. Prof. Conduct 32:3.8.

According to the Iowa Practice Series on Lawyer and Judicial Ethics '§ 7:8(e) Prosecutor's duty to disclose exculpatory and mitigating evidence:

As part of the prosecutor's dual function, which entails duties not only to the public but also to the accused, a prosecutor in a criminal case is compelled by both professional ethics and constitutional mandate to disclose exculpatory and mitigating information to the defense. Paragraph (d) of Rule 3.8 provides that a prosecutor shall "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal." In *Brady v. Maryland*, the United States Supreme Court held that the government is required to disclose exculpatory information to protect a

criminal defendant's due process rights. In language added by the Iowa Supreme Court at the suggestion of the Iowa Attorney General's Office to be fully consistent with existing constitutional standards, Comment 3 to Iowa Rule 3.8 has been supplemented with a sentence that reads: "For purposes of paragraph (d), evidence tending to negate the guilt of the accused includes evidence that tends to impeach a witness for the State.

Mr. Johnson has certain Constitutional rights to discovery, including as recognized in *Brady v. Maryland*, 373 U.S. 83 (1963), for any information that could be exculpatory for the defendant or in any way inconsistent with the State's theory of the case; and, *Giglio v. United States*, 405 U.S. 150 (1972), for any information that could be used to impeach the arresting officer or any other witness for the State. Moreover, these rights pertain to anything in the possession, custody, or control of not just the Story County Attorney's Office but also the other related County Attorney Offices as well as all Law Enforcement and State Agencies entrenched in this matter. *See Kyles v. Whitley*, 514 U.S. 419, 437 (1995); *see also* Iowa R. Crim. P. 2.14 (noting that the discovery obligations pertain to materials "within the possession, custody or control of the state").

Should the Court not Order the State to produce the requested evidence it would be a violation of the Defendant's constitutional right to preparation and presentation of a defense; as well as the right to a fair trial; mandated by the Due Process Clause of the Fifth Amendment to the Constitution.

WHEREFORE, Defendant prays that the Court grant his Motion and Order the State to produce the requested information to assist in the preparation and presentation of Mr. Johnson's defense and afford him a right to a fair trial that is mandated by the Due Process Clause of the Fifth Amendment to the Constitution. and directing the State to produce the aforementioned records within 21 days of the Court's Order.

Respectfully Submitted,

/s/ Christopher Sandy  
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ATTORNEY FOR THE DEFENDANT

Original Filed

Copy To:  
Story County Attorney  
Via E-Filing

PROOF OF SERVICE

The undersigned certifies that the foregoing was served upon all parties to the above cause by serving each party, each of the attorneys of record herein at their respective addresses as shown on the pleading on January 23, 2024

By:

US Mail

Hand Delivered

Certified Mail

Fax PD

Overnight Courier

Other E-Filing

/s/ Christopher Sandy  
Signature