

IN THE IOWA DISTRICT COURT FOR JEFFERSON COUNTY

<p>BART RICHMOND,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>JEFFERSON COUNTY ATTORNEY (CHAUNCEY MOULDING),</p> <p style="text-align: center;">Respondent.</p>	<p>CASE NO. CVEQ004708</p> <p>PLAINTIFF’S POST HEARING BRIEF</p>
--	---

TABLE OF CONTENTS

TABLE OF AUTHORITIES 2

INTRODUCTION & BURDEN OF PROOF 3

ARGUMENT 5

**I. Sheriff Richmond Was Not Afforded Adequate Due Process As
Required By The United States Constitution And The Iowa Constitution
And Thus, Should Be Removed From The *Brady-Giglio* List. 5**

**A. Sheriff Richmond Has A Protected Liberty Interest Which Affords
Him The Required Protection Of Due Process. 6**

**B. The County Attorney Failed To Provide Sheriff Richmond With
Adequate Due Process For Which He Was Entitled To. 9**

**II. Alternatively, Sheriff Richmond’s Placement On The Brady-Giglio
List Is Not Warranted Because He Has Demonstrated That The
Allegations Made Against Him Are Unfounded And, Even If Founded, Do
Not Warrant Placement On The List. 12**

**III. The County Attorney’s Unilateral Placement Of Sheriff Richmond
On The Brady-Giglio List Violates The Doctrine Of Separation Of
Powers. 21**

CONCLUSION 23

TABLE OF AUTHORITIES

Cases

Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) 5, 6
Brummer v. Iowa Department of Corrections, 661 N.W.2d 167, 174 (2003)..... 7, 8
Cleveland Board of Education v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985) 8, 9
Ducheene v. Hillsborough County Attorney, 167 N.H. 774, 119 A.3d 188 (2015).... , 15
FOP Lodge No. 5 v. City of Philadelphia, 267 A.3d 531, 550 (2021) 8, 9, 10
Gantert v. City of Rochester, 68 N.H. 640, 647 (2016) 11, 13, 14
Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972).... 5, 6
Kyles v. Whitley, 514 U.S. 419, 437, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995)..... 17
Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)..... 8
Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 1171, 3 L.Ed.2d 1217 (1959).....
Paul v. Davis, 424 U.S. 693, 701, 96 S. Ct. 1155, 1161, 47 L. Ed. 2d 405, 414 (1976) 7
State v. Green, 896 N.W.2d 770, 779 (2017)
State v. Laurie, 139 N.H. 325, 330 (1995)..... 7
Strickland v. United States, 32 F.4th 311 (2022) 12
Strickler v. Greene, 527 U.S. 263, 280, 119 S.Ct. 1936, 1948, 144 L.Ed.2d 286 (1999) 6, 15, 16
United States v. Bagley, 473 U.S. 676, 675, 105 S.Ct. 3375, 3379—3380, 43 L.Ed.2d 481 (1976) 6, 16, 17

Statutes

Iowa Code § 331.651(2)..... 21
Iowa Code § 331.653—331.658.....
Iowa Code § 331.751(1)..... 22
Iowa Code § 80F.1(24)(a)(2)..... 11
Iowa Code § 80F.1(24)(b)(2)..... 12
Iowa Code § 80F.1(24)(e) 11
Iowa Code § 80F.1(25) 20
Iowa Code § 80F.1(5) 11
Iowa Code § 80F.1(8)(a) 11
Iowa Code § 80G.2 20
Iowa Code § 80G.2(1)(b)..... 20

Rules

Iowa R. Evid. 5.609(a)(2) 19
Under Iowa R. Evid. 5.609 19

Constitutional Provisions

Iowa Const. art. 1 sec. 9..... 11
Iowa Constitution, Article V, Section 39..... 22
N.H. Const. pt. 1, art. 15 11

INTRODUCTION & BURDEN OF PROOF

The fundamental principles of due process and fairness lie at the heart of this case. Plaintiff, Sheriff Bart Richmond, challenges his unilateral placement on the *Brady-Giglio* List by the Jefferson County Attorney, Chauncey Moulding, arguing that he was denied the procedural protections guaranteed under the United States and Iowa Constitutions, and Iowa Code § 80F.1. The *Brady-Giglio* designation carries profound professional and reputational consequences for law enforcement officers, effectively undermining their ability to perform their statutory duties and eroding public trust.

Sheriff Richmond was not afforded adequate due process before being placed on the *Brady-Giglio* List. The County Attorney's failure to provide proper notice, an opportunity to be heard, assistance of counsel, or access to the evidence against him constitutes a violation of his constitutional rights and the rights afforded to him under Iowa Code § 80F.1. Furthermore, even if due process had been provided, the factual basis for his inclusion on the List is unfounded and does not meet the threshold for *Brady-Giglio* disclosure. Finally, this action represents an unconstitutional overreach by the county attorney, violating the doctrine of separation of powers by effectively nullifying the Sheriff's elected authority. For these reasons, the Court should order the removal of Sheriff Richmond from the *Brady-Giglio* List and provide appropriate relief.

We understand the Judge's ruling that Plaintiff, Sheriff Richmond, has the burden of proving by preponderance of the evidence that the Respondent, County

Attorney Chauncey Mounding, placed his name on the *Brady-Giglio* List without just cause and proper due process. However, this gives unusual consideration to the prosecution as it cloaks the allegations with the presumption of truthfulness.

This is not a case that originates in District Court where the Plaintiff would have the burden of proof, nor an appeal from a lower tribunal where findings and facts and conclusions of law have already been reached, therefore placing the burden on the Appellant.

It appears that a review by the District Court pursuant to 80F.1(25) involves first determining whether due process has been satisfied prior to a decision to place the Sheriff on the *Brady-Giglio* List. If due process is satisfied, then a review is undertaken to determine whether the evidence supports the reasons given for placement on the List. The final step would be to determine if the evidence supports one or more of the allegations, if the incident(s) are so serious as to justify placement on the Brady-Giglio List. Pursuant to the case law set forth herein, the violation must consist of fraud, dishonesty or untruthfulness to such a significant degree that the rights of others are seriously jeopardized.

The addition of Iowa Code § 80F.1(25) and 80F.3 demonstrate the legislature's intent to offer a remedy for an officer's unjust and unsupported inclusion on the *Brady-Giglio* List. Due process affords Sheriff Richmond the opportunity to be heard in front of a neutral tribunal, which he was not provided. Additionally, County Attorney Mounding deprived Sheriff Richmond of his right to counsel, his right to be provided with a copy of the complaint against him prior to his consideration

interview, and his right to be provided with the evidence against him. Finally, the allegations are not supported by the evidence. Even if the allegations were supported, the elements of fraud, dishonesty or untruthfulness necessary to place the Sheriff on the *Brady-Giglio* List, are not present.

ARGUMENT

I. Sheriff Richmond Was Not Afforded Adequate Due Process As Required By The United States Constitution And The Iowa Constitution And Thus, Should Be Removed From The *Brady-Giglio* List.

The *Brady-Giglio* List- named after two landmark supreme court cases: *Brady v. Maryland* and *Giglio v. United States*- is a compilation maintained by prosecutorial agencies to track law enforcement officers who have known credibility issues that could affect their reliability as witnesses in criminal cases. *Giglio v. United States*, 405 U.S. 150, 154, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972). In a criminal case, it is well-recognized that the State is “obligated to disclose information favorable to the defendant that is material to either guilt or innocence.” *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). This obligation “arises from a defendant’s constitutional right to due process of law and aims to ensure that defendant’s receive fair trials.” *Ducheene v. Hillsborough County Attorney*, 167 N.H. 774, 119 A.3d 188 (2015).

According to the United States Supreme Court in *Bagley*:

The *Brady* rule is based on the requirement of due process. Its purpose is not to displace the adversary system as the primary means by which truth is uncovered, but to ensure that a miscarriage of justice does not occur. Thus, the prosecutor is not required to deliver his entire file to

defense counsel, but only to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial.

United States v. Bagley, 473 U.S. 676, 675, 105 S.Ct. 3375, 3379—3380, 43 L.Ed.2d 481 (1976). The duty to disclose encompasses both exculpatory information and information that may be used to impeach a State’s witness and applies whether or not the defendant requests the information. *Id.* When the “reliability of a given witness may well be determinative of guilt or innocence,” nondisclosure of evidence affecting credibility may be a violation of a defendant’s due process rights. *Giglio*, 405 U.S. at 154—155, 92 S.Ct. 763.

In *Brady v. Maryland*, the United States Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused... violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Strickler v. Greene*, 527 U.S. 263, 280, 119 S.Ct. 1936, 1948, 144 L.Ed.2d 286 (1999), quoting *Brady*, 373 U.S. at 87, 83 S.Ct. 1194.

A. Sheriff Richmond Has A Protected Liberty Interest Which Affords Him The Required Protection Of Due Process.

In *Duchese*, the court explained that “inclusion on the ‘*Laurie* List’ carries a stigma, police officers have a weighty countervailing interest in insuring that their names are not placed on the list when there are no proper grounds for doing so.” *Duchesne*, 167 N.H. at 782—783, 119 A.3d 188. Although the “*Laurie* List”¹ is not

¹ The “*Laurie* List”- New Hampshire’s version of the *Brady-Giglio* List- derives from the case *State v. Laurie*, in which the New Hampshire Supreme Court held that the New Hampshire

available to members of the public generally, “placement on the list all but guarantees that information about the officers will be disclosed to trial courts and/or defendants or their counsel any time the officers testify in a criminal case, thus potentially affecting their reputations and professional standing with those with whom they work and interact on a daily basis.” *Id.*, at 783. Accordingly, “in accommodating these competing interests, basic fairness demands that courts not invariably defer to the judgement of prosecutors with respect even to the threshold issue of what kind of adverse information should result in an officer’s placement on a ‘*Laurie* List.’” *Id.*

In *Brummer v. Iowa Department of Corrections*, the Iowa Supreme Court asserted that “‘reputation alone, apart from some more tangible interests such as employment,’ is insufficient ‘to invoke the procedural protection of the Due Process Clause.’” *Brummer v. Iowa Department of Corrections*, 661 N.W.2d 167, 174 (2003), (Citing *Paul v. Davis*, 424 U.S. 693, 701, 96 S. Ct. 1155, 1161, 47 L. Ed. 2d 405, 414 (1976)). This observation created what is commonly referred to as the “stigma plus” standard. *Brummer*, 661 N.W.2d at 174. Under the “stigma plus” standard, a claimant basing a constitutional claim on damage to their reputation “must show more than simply damage to [their] reputation to establish a constitutionally protected liberty interest.” *Id.* This standard can be met by showing that action taken by the state agency “deprives a person of his or her liberty by damaging the person’s

Constitutional “right to present all favorable proof affords greater protection to a criminal defendant” than the federal standard established under *Brady*. *State v. Laurie*, 139 N.H. 325, 330 (1995).

reputation so severely that association or employment opportunities are impaired or foreclosed.” *Id.*

In the instant case, County Attorney Chauncey Moulding failed to provide Sheriff Richmond with a summary of the complaint, failed to provide Sheriff Richmond with the opportunity to be heard with counsel, and failed to apprise him of his right to obtain all evidence against him prior to an interview. *FOP Lodge No. 5 v. City of Philadelphia*, 267 A.3d 531, 550 (2021). Sheriff Richmond has a liberty interest in his personal and professional reputation at stake and thus is entitled to the protection of due process. Sheriff Richmond is an elected official with statutorily prescribed duties.

Under the principles established in *Mathews v. Eldridge* and *Cleveland Board of Education v. Loudermill*, Chauncey’s failure to follow the procedural safeguards outlined in Iowa Code § 80F.1 constitutes a violation of procedural due process. *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976); *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). In *Mathews*, the Court emphasized the need to balance the private interest affected, the risk of erroneous deprivation, and the government’s interest in efficient procedures. 424 U.S. at 334, 96 S.Ct. 893. Here, the private interest at stake—the Sheriff Richmond’s ability to perform his statutory duties, maintain his professional reputation, and serve the public as an elected official—is substantial. Chauncey’s failure to provide notice of the complaint and access to evidence creates a significant risk of erroneous deprivation, as Sheriff Richmond was denied a meaningful

opportunity to refute the allegations before being placed on the Brady-Giglio List. As *Loudermill* reinforces, procedural due process requires notice and an opportunity to be heard before depriving a person of a protected interest, especially where state law guarantees such protections. 470 U.S. at 542, 105 S.Ct. 1487. Chauncey's actions bypassed these essential steps, undermining Sheriff Richmond's rights and violating the Constitution's guarantee of fundamental fairness.

B. The County Attorney Failed To Provide Sheriff Richmond With Adequate Due Process For Which He Was Entitled To.

In *FOP Lodge No. 5 v. City of Philadelphia*, the Commonwealth Court of Pennsylvania determined that “[a]n officer may be afforded due process to argue why he should not be on the Do Not Call List without violating *Brady*.” 267 A.3d at 544. The court held that because the government is “prohibited from depriving individuals of life, liberty, or property, unless it provides the process that is due,” the basic elements of due process require that “adequate notice, the opportunity to be heard, and the chance to defend oneself before a fair and impartial tribunal having jurisdiction over the case” be given to the officer. *Id.*, at 545—546. The court explained that a due process claim requires a two-part analysis: “(1) whether there is a life, liberty, or property interest with which the state has interfered; and (2) whether the procedures attendant to that deprivation were constitutionally sufficient.” *Id.*, at 546.

Firstly, the court held that there was a protected liberty interest in the officers’ “professional and personal reputations.” *Id.* The court explained that “[T]he *Brady*-cop designation immediately puts a question mark on the officer’s ability to testify, and that question mark has severe employment consequences.” *Id.* at 548. Secondly,

the court held that “basic notions fairness require that an officer must be removed from the List when it is clear that there are no valid grounds for his being on the List, and that, absent other available procedures, the courts can provide a remedy to an aggrieved officer.” *Id.*, at 549. The Pennsylvania court relied on the case of *Duchesne v. Hillsborough County Attorney*, out of New Hampshire, stating that “[A]lthough Duchesne is a New Hampshire case, we find the case instructive.” *Id.* The Pennsylvania court concluded:

Adequate due process requires an *impartial* tribunal. As alleged in the complaint, the process offered by the Letters places the sole discretion with the District Attorney regarding whether officers should be placed on or remain on the Do Not Call List even though they were acquitted. Therefore, it is not an adequate remedy to leave the decision to the very person whom the appellant police officers contend mistakenly and unfairly placed them on the List in the first place.

Id., at 550. Further, although “prosecutors are immune from lawsuits challenging their official conduct, the complaint... seeks declaratory and injunctive relief to enjoin an alleged constitutional due process violation.” *Id.*, at 550—551. The court explained that “[S]uits which seek to compel affirmative action on the part of state officials or to obtain money damages to recover property from the Commonwealth are within the rule of immunity; suits which simply seek to restrain state officials from performing affirmative acts are not within the rule of immunity.” *Id.*, 551.

In *Gantert v. City of Rochester*, the New Hampshire Supreme Court considered whether the placement of a plaintiff police officer on the “Laurie List” comported with Due Process under New Hampshire Constitution which states that “no subject shall be . . . deprived of his life, liberty, or estate, but by the judgment of his peers, or the

law of the land. *Gantert v. City of Rochester*, 68 N.H. 640, 647 (2016); N.H. Const. pt. 1, art. 15. The Court has held that “‘law of the land’ means due process of law.” *Id.* The Iowa Constitution carries a similar provision: “no person shall be deprived of life, liberty, or property, without due process of law.” Iowa Const. art. 1 sec. 9.

Firstly, Sheriff Richmond was not provided with adequate notice as required by the Iowa Constitution and Iowa Code § 80F.1(5) which provides that “[A]n officer who is the subject of a complaint, shall at minimum, be provided a written summary of the complaint prior to an interview.” The notice of potential placement on the *Brady-Giglio* List provided to Sheriff Richmond on June 6, 2024, provided no notice of the allegations made against him, nor did it inform him of his right to “request documents, records, and any other evidence in the possession of the prosecuting agency² relevant to the determination of whether the officer’s name should be placed on the Brady-Giglio list.” Iowa Code § 80F.1(24)(e).

Secondly, not only was Sheriff Richmond deprived of his right to receive written notice before being placed on the *Brady-Giglio* List, but because the County Attorney unilaterally determined the date of the interview and refused to move it so Sheriff Richmond’s counsel could be present, as required by Iowa Code § 80F.1(8)(a) and due process, he was also deprived of his right to provide input to the County Attorney before the County Attorney made the determination to place Sheriff Richmond on the List. Iowa Code § 80F.1(24)(a)(2). Sheriff Richmond’s opportunity to meaningfully rebut the allegations made against him was further deprived by the

² “Prosecuting agency” means the county attorney as set forth in Iowa Code 80F.1(1)(g).

County Attorney's refusal to provide Sheriff Richmond with the documents and evidence used to support the claims against him, as required by Iowa Code § 80F.1(24)(b)(2).

Lastly, Sheriff Richmond was deprived of the right to be given the opportunity to be heard in front of a fair and impartial tribunal. *Strickland v. United States*, 32 F.4th 311 (2022). Because County Attorney Moulding was the sole decision maker determining Sheriff Richmond's placement on the *Brady-Giglio* List and whether to remove him from the List, Sheriff Richmond was not afforded the opportunity for his request for reconsideration to be heard in front of a neutral tribunal.

The County Attorney has argued that Iowa Code §§ 80F.1(5) and (8) do not apply to cases concerning placement of an officer's name on the *Brady-Giglio* List. However, fundamental due process requires officers be given notice of the allegations made against them and the right to be assisted by counsel. To conclude that these rights do not apply to officers who are the subject of a *Brady-Giglio* proceeding would render the rights afforded to officers under Iowa Code § 80F.1(24) meaningless because they would have no way to know what evidence to request with regard to allegations made against them, nor would they have a fair opportunity to provide input or rebut the allegations made against them.

II. Alternatively, Sheriff Richmond's Placement On The Brady-Giglio List Is Not Warranted Because He Has Demonstrated That The Allegations Made Against Him Are Unfounded And, Even If Founded, Do Not Warrant Placement On The List.

In *Gantert v. City of Rochester*, the New Hampshire Supreme Court held that "basic notions of fairness require that an officer must be removed from the list when

it is clear that there are no valid grounds for his being on the list, and that, absent other available procedures, the courts can provide a remedy to an aggrieved officer.” 68 N.H. 640, 651 (2016). The court found that there were valid grounds to place the plaintiff officer on the List because the police chief, police commission, and a neutral arbitrator found that he falsified reports and his actions “implicated his honesty and integrity.” *Id.*, at 650.

In 2004 the Attorney General issued a memorandum (memo) to all county attorneys and law enforcement agencies in New Hampshire which aimed to “develop a standardized method for identifying and dealing with potential *Laurie* material.” *Id.*, at 645—646. The Memo identified several categories of conduct that should “generally be considered potential *Laurie* material,” including:

- Any sustained instance where an officer deliberately lied during a court case, administrative hearing, other official proceeding, in a police report, or in an internal investigation;
- Any sustained instance where an officer falsified records or evidence;
- Any sustained instance that an officer committed theft or fraud;
- Any sustained instance that an officer engaged in an egregious dereliction of duty; and
- Any sustained complaint of excessive use of force.

Id., at 646.

According to the Memo, “law enforcement agencies should notify the county attorney, in writing, ‘whenever a determination is made that an officer has engaged in conduct that constitutes *Laurie* material.’” However, due to the two layers of review within the police department resulting in a determination that the officer’s conduct qualified as *Laurie* material and the arbitrator’s affirmation of the police departments determination, the court found that “to the extent there is a meaningful

difference between the procedure contemplated by the Memo and that which occurred here, the plaintiff received *more* process in this case.” *Id.*, at 647.

In *Laurie*, the prosecution possessed evidence prior to trial that consisted of the employment files and records of Detective-Sargent Laro, who testified at the defendant’s trial. *Id.* The records disclosed numerous instances of misconduct during his employment as a police officer that “reflected negatively on Laro’s character and credibility.” *Id.* For example:

There was information about numerous letters of complaint that detailed Laro verbally abusing, choking, or threatening to physically harm people. Laro also had been suspended both for neglect of duty and for threatening a civilian with a weapon. When he was subject to a polygraph examination concerning other incidents, it was determined that he was not being truthful in all cases, which ‘resulted in court cases being tainted.’ Laro was sent to a psychologist who said Laro ‘should not be entrusted with a gun and badge.’ There was also evidence that Laro lied about the content of his file and misrepresented his training and schooling. During another investigation, while seeking medical records of one of its clients, Laro threatened to close a clinic and arrest its personnel if they did not comply, claiming that his actions were authorized by the chief of police and the county attorney. There were reports from co-workers describing Laro as a ‘liar’ and someone ‘not to be trusted,’ and reports of incidents of ‘inappropriate’ use of firearms. The file also included evidence that the attorney general’s office told the Franklin police chief: ‘If you had a homicide tonight in Franklin, I would instruct you that Stg. Laro not be involved in the case in any capacity.’

Duchesne v. Hillsborough County Attorney, 167 N.H. 774, 779 (2015). The court found that this information “bore on Laro’s general credibility and could have been used by the defendant to cross-examine and impeach Laro, who was a key witness at trial.” *Id.* The *Laurie* decision “demonstrated the need for prosecutors and law enforcement agencies to share information that pertains to police officers who may act as witnesses for the prosecution.” *Id.*

Unlike Laro's pattern of misconduct and untruthfulness, in *Dechesne*, the only conduct at issue is the petitioners' involvement in "a single incident of alleged excessive use of force, and there is no suggestion that they attempted to lie about or cover up their conduct." *Id.*, at 784. Further, "although the petitioners were initially disciplined by the police chief for their alleged excessive use of force, the chief's decision was overturned by an arbitrator, a neutral factfinder, following a full hearing conducted pursuant to proceedings agreed to in the CBA." *Id.* at 785.

The circumstances in this case are much different. Sheriff Richmond was not the subject of a use of force investigation, nor did he attempt to lie or coverup the incident involving Deputy Simpson. Sheriff Richmond took prompt action to thoroughly investigate and properly resolve the incident.

The prosecutor's role in the justice system is to "search for truth in criminal trials." *Strickler*, 527 U.S. at 281, 119 S.Ct. 1936. Prosecutors are not "of an ordinary party to a controversy, but a of a sovereignty whose obligation to govern impartiality is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Id.*, quoting *Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935). This special status "explains both the basis for the prosecution's broad duty of disclosure and our conclusion that not every violation of that duty necessarily establishes that the outcome was unjust." *Strickler*, 527 U.S. at 281. However, "*there is never a real 'Brady violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different*

verdict.” *Id.* (emphasis added). Further, the question is “not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.” *Id.*, at 289—291. In other words, could the favorable evidence “reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” *Id.*

Regarding impeachment evidence, the district court must determine whether there was a “reasonable possibility that either a total, or just substantial, discount of [the] testimony might have produced a different result, either at the guilt or sentencing phase.” *Id.*, at 301. Impeachment evidence is “evidence favorable to the accused” so that, “if disclosed and used effectively, it may make the difference between the conviction and acquittal.” *Bagley*, 473 U.S. at 676, 105 S.Ct. 3375. This is because “the jury’s estimate of truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness testifying falsely that a defendant’s life or liberty may depend.” *Id.*, quoting *Napue v. Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173, 1171, 3 L.Ed.2d 1217 (1959).

The prosecution’s duty to disclose encompasses impeachment evidence as well as exculpatory evidence. *Bagley*, 473 U.S. at 676. Such evidence is material “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Id.*, at 682. Therefore, in order to comply with *Brady*, “the individual prosecutor has a duty to learn of any favorable

evidence known to the others acting on the government's behalf... including the police." *Kyles v. Whitley*, 514 U.S. 419, 437, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). However, "unless the omission deprive[s] the defendant of a fair trial, there [is] no constitutional violation requiring that [a] verdict be set aside, and absent a constitutional violation, there [is] no breach of the prosecutor's constitutional duty to disclose." *Bagley*, 473 U.S. at 675. Further, the materiality of evidence is considered collectively, not item by item. *Kyles*, 514 U.S. at 436, 115 S.Ct. 1555.

In the instant case, County Attorney alleges that Sheriff Richmond's response to an April 20, 2024, incident which involved a deputy's use of force in assisting with an arrest, constituted a lack of candor and called into question his truthfulness, justifying his placement on the *Brady-Giglio* List. (Exhibit 6). Sheriff Richmond was not present at or involved in the incident and was unaware of its occurrence until 10 days later on May 1, 2024. (Exhibit 11). Sheriff Richmond promptly and thoroughly investigated the incident and reviewed his office's use of force policy and concluded that the deputy in question had not violated the policy but ordered the deputy to complete de-escalation training to avoid future incidents involving use of force. Sheriff Richmond did not respond to County Attorney Moulding's May 7th email, as Moulding stated that he would assume the policy was not violated if he did not hear back from Sheriff Richmond. (Exhibit 12).

Moulding's allegation that Sheriff Richmond had instructed his deputies not to cooperate with investigations conducted by the County Attorney's office was contradicted by the testimony from deputies Jerry Marcellus and Rusty Simpson who

Moulding alleged Sheriff Richmond had given this instruction. Chief Deputy Marcellus and Deputy Simpson both testified that Sheriff Richmond had never given any such instruction. (Exhibit 6).

Moulding's allegation that Sheriff Richmond refused to comply with requests to produce the Sheriff's Office use of force policy was further proved to be unfounded. (Exhibit 6). A recording of a call between Sheriff Richmond and Michelle Manning, the County Attorney's paralegal, reveals that Sheriff Richmond made no such refusal, but rather inquired about an investigation being conducted by the Keokuk County Attorney's Office regarding the April 20th incident to which Sheriff Richmond was unaware of. (Exhibit 26). Sheriff Richmond contacted the Keokuk County Attorney, Amber Thompson, and provided her with the Jefferson County Sheriff's Office use of force policy. (Exhibit 14). When Ms. Thompson requested that Sheriff Richmond provide her with the deputy's personnel file, Sheriff Richmond stated that he was unable to provide her with that information because he believed it was confidential pursuant to their office's policy and Iowa Code. However, Sheriff Richmond informed Ms. Thompson that if she provided him with legal authority authorizing him to produce the personnel file, he would happily oblige. (Exhibit 20).

Under Iowa R. Evid. 5.608, a witness's character for truthfulness or untruthfulness may be attacked or supported by reputation or opinion evidence. Further, a witness may be questioned on specific instances of conduct in order to attack or support the witness's character for truthfulness. Under Iowa R. Evid. 5.609, a witness may be impeached by evidence of a criminal conviction. Additionally, for

any crime “regardless of punishment, the evidence must be admitted if the crime involved dishonesty or false statement.” Iowa R. Evid. 5.609(a)(2).

Sheriff Richmond’s actions in response to the investigation conducted into the April 20th incident by no means warrants placement on the *Brady-Giglio* List, nor could it be used to impeach him in criminal proceedings. Sheriff Richmond did not perjure himself, make false statements, falsify records or documents, nor did he himself use excessive force in violation of the use of force policy. Sheriff Richmond has not been charged of any crimes. Sheriff Richmond’s conduct does not call into question his propensity for truthfulness or qualify as evidence to which he could be impeached.

The following statutes and case law demonstrate that Sheriff Richmond’s belief that he could not legally release the personnel file of Deputy Simpson was reasonable, even if ultimately incorrect.

In *State v. Smith*, the Iowa Court of Appeals discussed that incidents in an officer’s disciplinary record may fall under the umbrella of information that could reasonably be construed to constitute an unwarranted invasion of privacy. 912 N.W.2d 499 (Iowa Ct. App. 2017). The Court presumed that police personnel records are confidential and agreed with the district court that the defendant “point[ed] out no evidence suggesting anything in the file would be relevant to this case.” *Id.* The Court disagreed with the defendant’s argument that his “fundamental interest in accessing the records ... to determine whether they contain evidence material to the

outcome of his case” outweighs the officer’s interest in maintaining confidentiality.”

Id.

Iowa Code § 80F.1(25) states in relevant part:

The district court shall perform an in-camera review of the evidence and may hold a closed hearing upon the request of the officer or prosecuting agency, or upon the court’s own motion... Evidence presented to the district court *shall be provided under seal and kept confidential* unless otherwise provided by law and ordered by the district court. (emphasis added).

Iowa Code § 80G.2 titled “Law enforcement officer — privilege — confidentiality,”

states in relevant part:

“(1)(2)(b) A law enforcement officer who is called to testify shall not disclose information that is subject to nondisclosure as a result of a court order, *statute*, contract, or a condition or requirement of a grant.

2. In determining whether nondisclosure of confidential or privileged information about a law enforcement officer may affect a defendant’s right to present a defense, the court shall make findings on the record regarding the impact of disclosure on the personal safety of the law enforcement officer or immediate family member of the law enforcement officer if the evidence is disclosed, the probative value of the confidential or privileged information about the law enforcement officer, the impact of disclosure on public safety, the potential for partial or limited disclosure of the privileged information, and the defendant’s constitutional right to present a defense. Any privileged information that is admitted for purposes of a pretrial hearing or a preliminary admissibility determination shall remain confidential.” (emphasis added).

Under Iowa Code § 80G.2(1)(b), Brady-Giglio evidence presented to the court is subject to nondisclosure by statute. Iowa Code 80F.1(25).

As one ‘Brady-Giglio List Study Committee’ member discusses, there is a concern that cases will shift from a defendant’s alleged capability to a law enforcement officer’s private personal record. *See Minutes: Brady-Giglio List Study Committee,*

supra note 7, at 4. In other words, the concern is that *Giglio* will redirect trials' focus away from the defendant's actions and on to the officer's credibility. *Id.*

III. The County Attorney's Unilateral Placement Of Sheriff Richmond On The Brady-Giglio List Violates The Doctrine Of Separation Of Powers.

On June 25, 2024, the day Sheriff Richmond was placed on the Brady-Giglio List, Chauncey sent a letter to the Fairfield Police, Jefferson County Police Chief Deputy Jerry Marcellus, ISP Post 13 Commander Lt. Jalas, and DCI SAC Joe Lestina, instructing them to disseminate the letter to their subordinates as necessary. In the letter, Chauncey states that Sheriff Richmond "should not place himself, and should not be asked to place himself, into positions where he may be called as a witness to testify in a criminal proceeding in Jefferson County, such as interviewing witnesses, drafting/executing search warrants, or swearing criminal complaints. Such actions on his part could taint any evidence generated and substantially impair the outcome of criminal proceedings." (Exhibit 21).

Iowa Code § 331.651(2) established that the sheriff is the chief law enforcement officer of the county.

Iowa Code § 331.653—331.658 outlines the sheriff's duties, including maintaining public peace, serving legal process, enforcing state laws, managing the county jail, and executing.

The Iowa Constitution, Article V, Section 39 confirms the sheriff as an elected official accountable to the public.

Placement on the Brady-Giglio List effectively discredits the Sheriff as a reliable witness in legal proceedings, it erodes their authority as law enforcement, and it impedes their constitutional and statutory duties. The Sheriff's ability to direct investigations, oversee arrests, and make decisions critical to public safety is compromised if the *Brady-Giglio* designation undermines their integrity in the eyes of the courts, other law enforcement officials, and the public. Further, by impairing the Sheriff's ability to act effectively as the chief law enforcement officer, the county attorney is interfering with the Sheriff's fulfillment of duties mandated by Iowa law.

Iowa Code § 331.751(1) establishes the county attorney's role as prosecuting authority but does not grant them unilateral power to limit another elected official's functions.

The Sheriff and county attorney are both independent constitutional officers and elected officials. The county attorney's placement of the sheriff on the Brady-Giglio List has the effect of nullifying the will of the electorate who chose the sheriff to perform the duties of the office. Such an action effectively usurps the voters' decision and disenfranchises the electorate. Sheriff Richmond was recently reelected to serve his second term as Sheriff of Jefferson County, Iowa in November 2024. No elected official should have unchecked authority to impede another's ability to perform their duties, particularly without rigorous procedural safeguards. *State v. Green*, 896 N.W.2d 770, 779 (2017) (recognizing the importance of elected officials' autonomy in fulfilling statutory duties). This is especially true where the action results in reputational harm and occupational incapacitation.

CONCLUSION

The evidence and legal principles presented in this brief make it clear that Sheriff Richmond's placement on the Brady-Giglio List was unjustified and procedurally deficient. The county attorney's unilateral action deprived Sheriff Richmond of his constitutionally protected liberty interest in his reputation and his ability to perform his duties as the duly elected sheriff of Jefferson County. The absence of due process safeguards—such as adequate notice, access to evidence, and a neutral hearing—renders this placement unlawful.

Sheriff Richmond was not himself the subject of any use of force investigation nor has he been alleged to have made untruthful statements regarding the April 20, 2024, incident. The allegations made against Sheriff Richmond are unsubstantiated and, regardless, do not rise to the level of acknowledged reasons for placing someone on the *Brady-Giglio* List. The allegations relied upon to justify Sheriff Richmond's inclusion on the List are unfounded, speculative, and fail to meet the well-established criteria for Brady-Giglio material. No evidence has been presented to demonstrate dishonesty, fabrication of evidence, or other misconduct that would legitimately undermine his credibility in legal proceedings. Instead, the county attorney has overstepped his authority, encroaching upon the constitutional and statutory role of the sheriff and improperly interfering with the will of the electorate.

For these reasons, this Court should find in favor of Sheriff Richmond and order his immediate removal from the Brady-Giglio List. Additionally, the Court should affirm that law enforcement officers are entitled to meaningful procedural

protections before facing such significant reputational and professional consequences. Upholding these principles is essential to maintain fairness, accountability, and the proper balance of powers within our judicial and law enforcement systems.

GRIBBLE LAW FIRM,

BY: /s/ Charles Gribble

Charles Gribble, AT0003083
317 6th Avenue, Suite 1101
Des Moines, Iowa 50309
Telephone: (515) 661-3167
Email: cgribble@gribblelawfirm.com
ATTORNEY FOR PLAINTIFF

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was **electronically filed** on EDMS on February 7, 2025. Subject to the exceptions cited therein, Iowa Court Rule 16.315 provides that this electronic filing, once electronically posted to the registered case party's EDMS account, constitutes service for purposes of the Iowa Court Rules.

Copies have been provided to all registered parties because once the document is posted, those parties are able to view and download the presented or filed document.

 /s/ Kendra Levine