

IN THE SUPREME COURT OF IOWA

BART RICHMOND,
PLAINTIFF/APPELLEE,

v.

JEFFERSON COUNTY ATTORNEY,
RESPONDENT/APPELLANT.

SUPREME COURT No.: _____

JEFFERSON COUNTY No.: CVEQ004708

APPLICATION FOR DISCRETIONARY REVIEW AND INTERLOCUTORY APPEAL OF:
DECEMBER 03, 2024 RULING ON MOTION TO DISMISS ON THE LIMITED ISSUE OF THE
CONSTITUTIONALITY OF IOWA CODE 80F.1(25)

HONORABLE JEFFREY FARRELL, DISTRICT JUDGE, IOWA'S FIFTH JUDICIAL DISTRICT

REQUEST TO STAY DISTRICT COURT PROCEEDINGS

Next Hearing December 20, 2024

Final proceeding scheduled for January 23, 2025



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STATEMENT OF THE CASE AND PROCEDURAL BACKGROUND

This matter arises from the placement of Jefferson County Sheriff Bart Richmond on a Brady/Giglio list by the Jefferson County Attorney, Chauncey Moulding. The Sheriff was placed on said list due to the prosecutor's determination that the Jefferson County Sheriff had interfered with an internal investigation into inappropriate use of force by a Jefferson County Deputy Sheriff. This interference placed the Sheriff's candor and credibility at issue, and he was placed on a *Brady/Giglio* list on June 25, 2024.

The Sheriff filed a petition for judicial review of the decision to place him on a *Brady/Giglio* list on August 21, 2024, in reliance on Iowa Code section 80F.1(25). 80F.1(25) is a new provision of Iowa law which went into effect July 1, 2024. It establishes a right for an officer who is placed on a prosecutor's *Brady/Giglio* list to petition for judicial review of that decision.

On September 12, 2024, the County Attorney filed a motion to dismiss and re-cast the petition, citing, among other matters, the unconstitutionality of Iowa Code section 80F.1(25). This motion was ruled upon by the District Court December 3, 2024 (hereinafter "*Ruling*"), granting parts of the County's motion (relating to Petitioner's request for damages and attorney fees) but denying the motion to dismiss on constitutional grounds, ruling as follows:

The county attorney claims that the statute violates principles of

separation of function and due process. Statutes are cloaked with a presumption of constitutionality. *Garrison v. New Fashion Pork LLP*, 977 N.W.2d 67, 85 (Iowa 2022) (cite omitted). “The challenger bears a heavy burden, because it must prove the unconstitutionality beyond a reasonable doubt.” *Id.* The statute specifically includes a provision requiring prosecutors to produce Brady-Giglio material in all cases as required by the state and federal constitutions. Iowa Code section 80F.1(24)(f). Even if the court granted Richmond relief in this case, prosecutors have the ability to review and provide Brady-Giglio material if required by a constitution or other provision of law. The statute does not intrude on a prosecutor’s duties and does not violate due process. Additionally, courts ultimately decide disputed Brady or Giglio questions. When the court considers the merits of Richmond’s claim, it will be determining whether the information used by the county attorney to place Richmond on the list constitutes Brady-Giglio material. It would consider the same standards if determining whether the materials must be produced under Brady and Giglio as part of a criminal prosecution. In either instance, due process is met because the dispute is presented to a court who will resolve the issue. For those reasons, the statute does not violate the state or federal constitution. The county attorney’s motion is denied on this ground.

Ruling, p.6-7.

This interlocutory appeal is limited to the sole issue of the constitutionality of Iowa Code section 80F.1(25). Appellant/Respondent County Attorney appeals Paragraph D (pages 6-7) of the District Court’s ruling on the constitutionality of Iowa Code section 80F.1(25) , and respectfully requests that the District Court’s ruling on the constitutionality of the statute, upon review, be reversed and remanded.

ARGUMENT: IOWA CODE 80F.1(25) IS UNCONSTITUTIONAL

The most glaring constitutional defect in Iowa Code 80F.1(25) is that it impedes a criminal Defendant's substantive and procedural due processes of law, and right to a fair trial, which is the reason for the entire body of *Brady-Giglio* caselaw to begin with. Should a prosecutor determine that an officer's credibility is in question, that fact would constitute exculpatory information which is constitutionally required to be provided to the Defense if the officer is a witness. Should the name be judicially stricken from the list without a change in the credibility determination of the prosecutor, that does not change the fact that the officer's credibility remains in question and as such, must be disclosed to the Defense in any case in which the officer is expected to testify.

Iowa Code 80F.1(25) establishes, in part, as follows: "An officer shall have the right to petition the district court, appeal, or intervene in an action regarding a prosecuting agency's decision to place an officer on a Brady-Giglio list. The district court shall have jurisdiction over the review of the prosecuting agency's decision. 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. The district court may affirm, modify, or reverse a prosecuting agency's decision, and issue orders or provide relief, including removal of the officer from a Brady-Giglio list, as justice may require." This provision

inserts the courts into a position of evaluating a prosecuting attorney's independent judgment regarding the credibility of a witness who the prosecutor must rely on in order to present evidence. This exercise of independent judgment is one of the principal obligations of a criminal prosecutor. "The prosecutor is an administrator of justice, a zealous advocate, and an officer of the court. The prosecutor's office should exercise sound discretion and independent judgment in the performance of the prosecution function." American Bar Association Standard 3-1.2(a).

"It is a fundamental principle that one branch of government is not permitted to intrude upon the powers of another branch of government." *State v. Ragland*, 836 N.W.2d 107, 117 (Iowa 2013). While courts possess the purview to make credibility determinations of witnesses called before the Court, the Court has no purview to determine which witnesses are sufficiently credible to be called by a party before it, in this case the prosecuting attorney, in direct contravention of the credibility determinations of that party. Judicial oversight over a prosecutor's credibility determination of a witness violates the separation of powers clause of the Iowa constitution. "The powers of the government of Iowa shall be divided into three separate departments — the legislative, the executive, and the judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted." Iowa Constitution, Art. III, Sec 1. This constitutional provision "prohibits the judicial branch from exercising

Page 5 of 14

any function properly belonging to the legislative or executive branch.” *Iowa Citizens for Cmty. Improvement & Food & Water Watch v. State*, 962 N.W.2d 780, 790 (Iowa 2021). Furthermore, this constitutional provision “prohibits one department of the government from impairing another in the performance of its constitutional duties.” *State v. Tucker*, 959 N.W.2d 140, 148 (Iowa 2021).

In enacting 80F.1(25), the legislative branch has taken a duty which rests solely in the executive branch (the determination of credibility of witnesses that the State relies on in presenting evidence to the Court in a criminal proceeding) and placed that determination in the purview of the Courts.

Additionally, the statute itself unconstitutionally impedes a Defendant’s right to due process of law. A defendant in a criminal matter shall not be deprived of life, liberty or property without due process of law. Iowa Constitution, Art. I, Sec 9. *See also U.S. Const. Amend V*. A prosecuting attorney has an ongoing ethical duty to disclose potential impeachment information to the Defendant relating to the State’s witnesses in a criminal proceeding.

“It is, of course, a violation of due process for the prosecution to suppress evidence favorable to the accused if that evidence is material to guilt or punishment, irrespective of good faith. This rule applies in three situations: (1) where evidence is discovered after trial that the prosecution's case included perjured testimony, of which the prosecution was aware, or should have been aware; (2) where the prosecution fails to comply with the accused's pretrial request for specific evidence; and (3) where the prosecution fails to comply with the accused's general request for "Brady material."

State v. Todden, 364 N.W.2d 195, 198, (Iowa 1985)(internal citations omitted).

Prosecuting attorneys are constitutionally bound to turn over information relating to the credibility of a State's witness, and failure to do so entitles a defendant to a new trial. “When the ‘reliability of a given witness may well be determinative of guilt or innocence,’ nondisclosure of evidence affecting credibility falls within this general rule.” *Giglio v. United States*, 405 U.S. 150, 154 (1972)(quoting *Napue v. Illinois*, 360 U.S. 264 (1959)). The Department of Justice has promulgated policies on Giglio disclosure as applied to federal agencies.

The exact parameters of potential impeachment information are not easily determined. Potential impeachment information, however, has been generally defined as impeaching information which is material to the defense. It also includes information that either casts a substantial doubt upon the accuracy of any evidence—including witness testimony—the prosecutor intends to rely on to prove an element of any crime charged, or might have a significant bearing on the admissibility of prosecution evidence. This information may include but is not strictly limited to: (a) specific instances of conduct of a witness for the purpose of attacking the witness' credibility or character for truthfulness; (b) evidence in the form of opinion or reputation as to a witness' character for truthfulness; (c) prior inconsistent statements; and (d) information that may be used to suggest that a witness is biased.

Department of Justice JM § 9-5.100

A prosecuting attorney's determination that an officer's candor and credibility are in question, through independent exercise of professional judgment, constitutes exculpatory and/or impeachment information which a prosecutor is ethically bound to provide to Defendant and Defendant's attorney. Iowa Code section 80F.1(25) violates a Defendant's confrontation clause rights under Iowa Const. Art. I, Sec. 10, as the statute would limit disclosure of information to a Defendant which is directly relevant to a Defendant's ability to present a defense.

Should 80F.1(25) be upheld, it would put Iowa's system of justice in an untenable position. A prosecuting attorney's independent determination that grounds exist to doubt the credibility of an officer sufficient to create an impeachment issue ethically mandate that such information be turned over to the defense. However, in the event a judicial officer for some reason rules in an 80F.1(25) proceeding that there is not cause for placement on a list, it would create an untenable position for the prosecutor, who is duty-bound to both provide exculpatory information to the Defense, and to also comply with a Court's order.

Not only are provisions of 80F unconstitutional, specifically 80F.1(25), the entire statute is poorly written. The Brady/Giglio provisions of 80F.1(24) and 80F.1(25) were “shoe-horned” into a statute which originally set forth an officer’s employment rights relating to his/her employing agency. This is why most of the provisions of 80F.1(1)-80F.1(23) relate to rights when complaints are received relating to an officer’s behavior made to a supervisor within the department. The legislature overstepped its authority in establishing a statute which directly infringes on the due process rights of a criminal Defendant, as well as violating the separation of powers doctrines, and should be struck down.

The Iowa legislature’s adoption of 80F.1(25) appears to be the first time a State has established a right to judicial review and oversight of *Brady/Giglio* determinations by prosecutors. While other states, including Arizona, North Carolina, and Pennsylvania, have either proposed or established statutory schemes similar to 80F.1 subsections (1) through (24), Iowa appears to be the first and thus far only state to establish an avenue for judicial reconsideration after a prosecutor has made an independent credibility determination pursuant to 80F. Accordingly, as 80F.1(25) came into effect in July 2024, Richmond’s petition for judicial review in the instant case appears to not simply be a matter of first impression of 80F.1(25) in Iowa, but a matter of first impression of this entire concept nationally.

The legislature waded into matters outside their authority under the United States and Iowa Constitutions in enacting 80F.1(25). This Court, in reviewing the statute in light of the Constitutional and ethical considerations set forth *supra*, should find that the statute is unconstitutional as enacted and as applied, and as such, Iowa Code 80F.1(25) should be reviewed and deemed unconstitutional.

REQUEST FOR STAY

Because the matter is one involving the substantive due process constitutional rights of criminal defendants, as well as their constitutionally protected confrontation clause rights, the questions over the constitutionality of Iowa Code section 80F.1(25) should be ascertained and determined prior to any final determination by the District Court in Jefferson County CVEQ004708. There is no prejudice to the Plaintiff in this matter if the proceedings are stayed. Conversely, should this matter proceed, the constitutional rights of criminal defendants may be adversely impacted.

CONCLUSION

The Appellant/Respondent Jefferson County Attorney prays that the Supreme Court enter an order staying Jefferson County CVEQ004708, and review the District Court's December 3, 2024 ruling relating to the limited issue of the constitutionality of Iowa Code 80F.1(25), and upon review, find the statute unconstitutional.

Appellant/Respondent, Jefferson County
Attorney,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

Pursuant to Iowa Rule of App. Procedure 9.1401

This Application for Discretionary Review and Interlocutory Appeal complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

[X] this Application for Discretionary Review and Interlocutory Appeal contains 2,496 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This Application for Discretionary Review and Interlocutory Appeal complies with the typeface requirements of Iowa. R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

[X] this Application for Discretionary Review and Interlocutory Appeal has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman font size 14.

Signature

Date

/s/  _____

December 16, 2024

CERTIFICATE OF FILING:

I certify I filed this Application for Discretionary Review and Interlocutory Appeal with the Clerk of the Supreme Court via EDMS on December 16, 2024.

A handwritten signature in black ink, appearing to read "Ces mg", is positioned above a horizontal line.

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CERTIFICATE OF SERVICE:

I certify on December 16, 2024, I served this document by EDMS on:

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and by filing with the Jefferson County Clerk of Court. The Iowa Attorney General's Office will be served via email.



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