IN THE COURT OF APPEALS OF THE STATE OF OHIO
SECOND APPELLATE DISTRICT, CLARK COUNTY

STATE OF OHIO,	:	Appeals Case No. 24-CA-0073
Appellee,	:	Trial Court Case Nos. 22-CR-508, 22-CR-547(A), and 22-CR-680
-vs-	:	
RYAN P. ALLEN,	:	
Appellant.	:	

BRIEF OF APPELLANT, RYAN P. ALLEN, ORAL ARGUMENT REQUESTED

Ryan P. Allen
144 Tishman St.
Columbus, OH 43228
937.505.7570
ryan.allen84@aol.com

Appellant, PRO SE

Robert C. Logsdon, (100550)
Clark County Prosecutor's Office
50 E. Columbia St., Ste. 449
Springfield, OH 45502
937.521.1770
rclogsdon@clarkcountyohio.gov

Counsel for the State of Ohio,
Appellee

TABLE OF CONTENTS

Table of Authorities …….
Statement of the Case and Facts …….
I. Assignments of Error …….
II. Argument…….
A. The Trial Court Abused Its Discretion in Denying the Post-Conviction Relief Petition Without an Evidentiary Hearing …….
B. Prosecutorial Misconduct by Failing to Correct the Record and Suborning Perjury…….
C. The Trial Court Erred by Excluding Relevant Discovery That Would Have Substantiated Appellant's Entrapment Defense …….
D. Prosecutorial Duty to Disclose Evidence of Law Enforcement Dishonesty Under Brady v. Maryland……
E. Constitutional Right to Report Public Misbehavior and Crime is Secured……
F. Truth Cannot be the Subject of Civil or Criminal Sanctions…….
III. Conclusion ……

TABLE OF AUTHORITIES

Cases

Brady v. Maryland, 373 U.S. 83 (1963) 13,16
Giglio v. United States, 405 U.S. 150 (1972) 10,16
Moldowan v. City of Warren, 578 F.3d 351 (6th Cir. 2009) 14
Myles v. City of Dayton, 2d Dist. Montgomery No. 10401, 1987 WL 29451 (Dec. 14,1987)...13
Napue v. Illinois, 360 U.S. 264 (1959) 10
State v. Jackson, 64 Ohio St.3d 107, 1992-Ohio-41 8
Brawner v. City of Richland, Texas, 2022 WL 10663730 (5th Cir. 2022) 14
State v. Doran, 5 Ohio St. 3d 187, 449 N.E.2d 1295 (Ohio 1983).....12
Garrison vs. Louisiana 379 U.S. 64 (1964).....17
Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 675 F.2d 1349, 1357 (4th Cir. 1982) ……11
Wortham v. Dayton, 2023-Ohio-1767……..13
Grimmett vs. Freeman 59 F. 4th 689 (2023) 16, 17
NY Times Co. vs. Sullivan 376 U.S. 254 ……17
State v. Calhoun, 86 Ohio St.3d 279, 1999-Ohio-102 …… 9
State v. Jones, 2007-Ohio-5624, ¶ 19 (3d Dist.). Case No. 9-23-59 ……....9
State v. Milanovich (1975), 42 Ohio St.2d 46 [71 O.O.2d 26]..... 8
Motes v. United States, 178 U.S. 458, 462-63, 20 S.Ct. 993, 44 L.Ed. 1150 (1900).....14
In Re Quarles, 158 U.S. 532, 535, 15 S. Ct. 959, 39 L. Ed. 1080 (1895) ……..14
Shumpert v. Johnson, CAUSE NO.: 1:06CV327-SA-JAD (N.D. Miss. Jun. 19, 2008).....14
Williams v. Riley, No. 07-60252, 2008 WL 1859818, *3 (5th Cir. Apr. 25, 2008) ……....15
State of Minn. v. Timothy Robert Turner, No. A14–1408 (2015).....17
State v. Machholz, 574 N.W.2d 415, 419 (Minn.1998) ……..17
Ashcroft v. Free Speech Coal., 535 U.S. 234, 255, 122 S.Ct. 1389, 1404 (2002) ……..17
State v. Jude, 554 N.W.2d 750, 753 (Minn.App.1996) ……...17
Nardone v. United States, 308 U.S. 338 (1939) ……..20
Silverthorne Lumber Co., Inc. v. United States, 251 U.S. 385 (1920) ……20
State v. Allen, 2024 Ohio 2549 (Ohio Ct. App. 2024) ……19
State v. Allen, 2023-Ohio-3655 …….. 18

Other Authorities

Ohio Ev. R. 106 ……..……11
Ohio Ev. R. 607 ……..……10,12
Ohio Ev. R. 608 ……...……..10, 12, 14

Statutes

R.C. 2953.21 ……. 8
R.C. 2921.15 …… 16
R.C. 149.43 …….. 20

STATEMENT OF THE CASE AND FACTS

Appellant, Ryan P. Allen, was charged with violating a consent agreement to civil protection order, a fifth-degree felony, in three separate cases: Case Nos. 22-CR-508, 22-CR-547(A), and 22-CR-680. In Case Nos. 22-CR-508 and 22-CR-680, Appellant was accused of violating the civil protection order's paragraph 7 prohibition, by contacting the protected party's (Deputy Morgan Allen) employer, the Clark County Sheriff's Department. The State concentrated on only two emails between Appellant and the sheriffs department, and filed a Motion in Limine to disclude all other communications, including invites by the internal affairs unit for information regarding investigations into Deputy Allen; and that Appellant could come into the department to retrieve reports of the investigations when they were concluded. Coincidentally, entering into a protected party's place of employment would also constitute a violation of a CPO, however this was never alleged for any charge.

Appellant was arrested on indictment in Case No. 22-CR-508 on 22 June 2022, and subsequently he was charged with an additional VCPO in Case Number 22-CR-547(A) - unrelated to Deputy Allen - after being processed into the Clark County Jail; whereby he was served a separate ex parte protection order that was filed the same day. Later, in August of 2022, Appellant was charged in Case No. 22-CR-680 for VCPO when he emailed a public records request requesting information relevant to Deputy Allen's work schedule and an alleged violation of a shared parenting order that Appellant and Deputy Allen were issued regarding their minor daughter (Case No. 20-DS-0425). The two cases relevant to Deputy Allen, #'s 508 & 680, were merged during pretrial stages.

During the first day of trial in Case Nos. 22-CR-508 and 22-CR-680, the State heavily relied on testimony from several witnesses, all deputies of the Clark County Sheriff's

Department, regarding two separate emails to the department. All of these witnesses, excluding the alleged victim, stated that they were, for the most part, unaware of the protection order being in place when [they] originally initiated contact with Appellant regarding specific concerns of criminal activity and misconduct that Deputy Allen was alleged to be a part of, including but not limited to contributing to the delinquency of minors in her home and in her presence. The witnesses further stated that during the few month's long exchange of information between Appellant and Internal Affairs, they were only made aware of the CPO [after] Appellant was indicted.

On the second day of trial, and before Appellant's case-in-chief, Appellant had found within one of the internal affairs reports - evidence that was excluded by the State's sustained Motion in Limine - the alleged victim and the other State's witnesses were in fact participants in at least two separate conferences referencing the very CPO they claimed during examination they did not have knowledge of. This prompted Appellant to communicate to his trial counsel that the record must be corrected for the jurors to hear and that counsel should call the witnesses back in for rebuttal testimony. Appellant's trial counsel attempted to introduce one of the documents for correction and rebuttal purposes. The trial court excluded its introduction.

Following Appellant's subsequent conviction, he was sentenced to 5 years community control with certain special conditions that immediately raised questions to the validity and enforceability of the conditions. A timely appeal was filed in Case No. 23-CA-0006 which was decided by this Court on 6 October 2023. In that decision those questionable conditions were found to be overbroad as constructed and remanded with narrowing guidelines. However, prior to the decision in his first appeal, Appellant was alleged to have violated the same conditions that were reversed. Appellant's community control was revoked and he was sentenced to 36 months

incarceration in ODRC. A subsequent appeal followed, Case No. 23-CA-0052 & 0065 (consolidated), and this Court correctly determined that the trial court had abused its discretion for finding that Appellant had violated the original conditions that were found to be overbroad. On 3 July 2024, this Court reversed the trial court's decision and remanded back for further considerations under the narrowed conditions that were entered into the record through a *nunc pro tunc* entry by the trial court on 20 February 2024. However, Appellant, on 24 July 2024, by another *nunc pro tunc* entry, was still violated under the narrowed conditions by the trial court without any hearing, even though this Court's mandate gave clear guidance that the Appellant retained certain due process rights that the trial court ignored. However, rather than return Appellant back into incarceration, he was placed back on community control. This is currently under appeal in Case No. 24-CA-0048.

Appellant, while still incarcerated, filed a petition for post-conviction relief of his original conviction asserting, amongst other errors, that there had been prosecutorial misconduct by failing to disclose evidence of law enforcement dishonesty as well as the exclusion of exculpatory evidence. Although the conviction was appealed in Case No. 23-CA-0006, that appeal, as procedure dictates, only reflected what was within the direct record. Appellant's following petition for post conviction relief cited multiple errors that could only be appropriately challenged using information outside of the direct record. This included communications with internal affairs, which would have demonstrated that the alleged victim, Deputy Allen's credibility, as well as other State's witnesses, would be impeachable. After this petition sat dormant well past the 180 day time limit for ruling, the trial court finally denied the petition without an evidentiary hearing, prompting this appeal.

In addition to the abuse of discretion the trial court has shown by denying this petition, and other constitutional/procedural errors throughout his trial, Appellant asserts that his right to report public misbehavior, specifically regarding law enforcement misconduct, is protected by the First Amendment. He contends that his communications with the Clark County Sheriff's Department, including references to Deputy Allen's litany of misconduct and dishonesty - which was affirmed in one of the reports prior to Appellant's indictment - should not have been used against him in court, particularly when those communications were made in good faith as part of his secured right to report crime and public misconduct. Appellant now appeals as follows:

I. ASSIGNMENTS OF ERROR

Assignment of Error 1
The trial court abused its discretion denying Appellant's post-conviction relief petition by res judicata without holding an evidentiary hearing, despite substantial claims of prosecutorial misconduct and their exclusion of exculpatory evidence.

Assignment of Error 2
The prosecutor engaged in misconduct by failing to correct the record and allowing false testimony to remain, in violation of the principles set forth in *Napue v. Illinois*, 360 U.S. 264 (1959).

Assignment of Error 3
The trial court erred by allowing the exclusion of relevant discovery that would have substantiated Appellant's defense of entrapment as well as impeaching the credibility of the prosecution's witnesses at trial.

Assignment of Error 4
The prosecutor failed their duty to disclose exculpatory evidence, including but not limited to evidence of law enforcement dishonesty, under *Brady v. Maryland*, 373 U.S. 83 (1963).

Assignment of Error 5
The trial court failed to acknowledge Appellant's constitutional right to report public misbehavior and crime, which is protected under the First Amendment of the U.S. Constitution.

Assignment of Error 6
The trial court erred when it allowed the State to criminalize statements unfettered without proving or disproving the truthfulness of the statements.

II. ARGUMENT

A. The Trial Court Abused Its Discretion in Denying the Post-Conviction Relief Petition Without an Evidentiary Hearing

The trial court erred in denying Appellant's petition for post-conviction relief without an evidentiary hearing. Under Ohio Revised Code § 2953.21(C), the trial court must grant an evidentiary hearing unless the record clearly demonstrates that the defendant is not entitled to relief. See *State v. Jackson*, 64 Ohio St.3d 107, 1992-Ohio-41, "post-conviction relief petitions are not summarily dismissed without determining if there are substantive grounds for relief." The trial court must conduct a hearing when the defendant's claims are substantive enough to warrant the reversal of the conviction or showing the necessity of a new trial. *State v. Milanovich* (1975), 42 Ohio St.2d 46 [71 O.O.2d 26], "[w]here a claim raised by a petition for postconviction relief under R.C. 2953.21 is sufficient **on its face** to raise an issue that petitioner's conviction is void or voidable on constitutional grounds, and the claim is one which depends upon factual allegations that cannot be determined by examination of the files and records of the case, the petition states a substantive ground for relief." (emphasis added). Simply put, the Ohio Supreme Court has emphasized that petitions should not be dismissed without a hearing if they allege facts that, if proven, would warrant relief.

In the instant matter, Appellant's post-conviction relief petition raised several credible claims, including but not limited to the failure of the State to disclose exculpatory evidence of law enforcement dishonesty and the trial court's improper exclusion of discovery materials critical to Appellant's defense. These claims, *prima facie*, necessitate an evidentiary hearing to allow the court to fully evaluate their impact on Appellant's convictions. The claims raised in Appellant's post-conviction petition—particularly regarding the prosecutor's failure to disclose

evidence of law enforcement dishonesty and the trial court's exclusion of impeachment evidence—at minimum, are sufficiently serious to warrant a hearing.

The evidence of State's witnesses, including the alleged victim's credibility, was not made available during the trial and was critical to Appellant's defense. Additionally, the court's decision not to allow the production of exculpatory evidence, once discovered, and directly related to the credibility and honesty of the State's witnesses, precluded Appellant's right to challenge these errors on appeal. Res Judicata would only apply if the Appellant could have raised these issues on direct appeal, therefore the trial court's decision to exclude this relevant discovery prohibited Appellant's appropriate claim on direct appeal. The information exists and was prohibited from being included in the direct record, whereby res judicata would not be a valid reason to bar Appellant's collateral challenge. *State v. Jones*, 2007-Ohio-5624, ¶ 19 (3d Dist.). Case No. 9-23-59, "[t]he doctrine of res judicata bars all claims **except those that were not available at trial or on appeal because they are based on evidence outside the record**." (emphasis added)

The trial court's failure to hold an evidentiary hearing on these claims was an abuse of discretion, as it denied Appellant the opportunity to present crucial evidence that could have affected the outcome of his trial or, in the alternative, overrule the conviction and set for a new trial. *State v. Calhoun*, 86 Ohio St.3d 279, 1999-Ohio-102, reinforces that the trial court's discretion is not unfettered, particularly when the record suggests a need for additional factual development. The court's failure to provide Appellant with a meaningful opportunity to present evidence was arbitrary and unjust. By failing to hold an evidentiary hearing, the trial court overlooked its obligation to carefully consider the serious constitutional claims presented. This

failure amounts to a reversible abuse of discretion, warranting remand for a full evidentiary hearing.

B. Prosecutorial Misconduct by Failing to Correct the Record and Suborning Perjury

In *Napue v. Illinois,* 360 U.S. 264 (1959), the U.S. Supreme Court held that a prosecutor's failure to correct false testimony and permitting perjury constitutes a violation of the defendant's due process rights. Additionally, Ohio Rules of Evidence 607 and 608 speak directly to the credibility and honesty of a witness. Any evidence existing that goes directly to the credibility of any witness, including evidence of perjurious statements at trial, does not fall under the exclusionary rule. Here, the prosecutor allowed Deputy Morgan Allen to testify without disclosing that she had been involved in an internal affairs investigation which she was found to be dishonest. What is specifically erroneous about this nondisclosure is that the dishonesty by Deputy Allen was directly related to the communications Appellant was engaging with the sheriff's office internal affairs unit, which the State later encouraged as a violation. Furthermore, the State's key witnesses in this case, all agents of the same department, gave false testimony related to the same communications regarding the investigations that Deputy Allen was later found to be dishonest, and would have been substantiated by the document(s) Appellant's trial counsel attempted to introduce for rebuttal on the second day of trial. This failure to disclose critical impeachment evidence prevented Appellant from challenging Deputy Allen's, as well as the State's other key witnesses' credibility, violating Appellant's due process protections.

What's more, the prosecutor's failure to correct false testimony proffered in the State's case-in-chief, and to disclose impeachment evidence, once Appellant's trial counsel brought it to their attention, constitutes prosecutorial misconduct. In *Giglio v. United States*, 405 U.S. 150 (1972), the Supreme Court held that withholding evidence of a witness's dishonesty violates the

defendant's right to due process and a fair trial. Moreover, it was incumbent upon the trial court to allow this evidence to be introduced to correct a discovered error at the earliest stage possible. See *Great Coastal Express, Inc. v. International Brotherhood of Teamsters*, 675 F.2d 1349, 1357 (4th Cir. 1982) ("[p]erjury and fabricated evidence are evils that can and should be exposed at trial, and **the legal system encourages and expects litigants to root them out as early as possible**"), *cert. denied*, 459 U.S. 1128, 103 S.Ct. 764, 74 L.Ed.2d 978 (1983). (emphasis added).

Here, the prosecutor's conduct of withholding disclosure and, by extension, the trial court's outright exclusion of rebuttal evidence in this case, deprived Appellant of the ability to impeach Deputy Allen and the State's other key witnesses, violating Appellant's 6th amendment right to confrontation and fair trial and, deprived appropriate correction of the record that procedure would encourage and obligate. *Great Coastal Express, Inc*, supra.

C. The Trial Court Erred by Excluding Relevant Discovery That Would Have Substantiated Appellant's Entrapment Defense

Appellant sought to introduce discovery materials related to Deputy Allen's involvement in internal affairs investigations, which would have been crucial to his defense of entrapment. Ohio Rules of Evidence 106, the rule of completeness, mandates that when a part of a statement is introduced, the opposing party may require the introduction of other parts that provide context to the statement. In the instant matter, The State's whole case was that Appellant should not have communicated with a protected party's employer as the prior restraint in paragraph 7 of the CPO encompasses. However, Appellant was denied the opportunity to introduce evidence that would show that the law enforcement agency he was communicating with was not only aware of the active CPO, but that [**they**] initiated contact with Appellant, and later further encouraged contact

by requesting information regarding internal affairs investigations. This information would have corroborated an entrapment defense.

What's more, prior to indictment or contact with the Clark County Sheriff's Office, while having knowledge of the misconduct of Deputy Allen, Appellant chose to communicate with a separate and disconnected agency requesting guidance as to how to report this knowledge, avoiding Deputy Allen's employer altogether. A key element to an entrapment defense - predisposition - would be shown to be nonexistent in the very first email dated 5 October 2021; requested [by] Chief Deputy Jeff Meyer; whereby Appellant was assured by Meyer, in a phone call [initiated by] the chief deputy, that these communications with the department would not constitute a violation of the CPO in question. This expressed concern by Appellant is an action completely opposite to the predisposition element necessary to disqualify an entrapment defense. Additionally, a sheriff's department interoffice communication - excluded from evidence - shows that Meyer had communicated with Sgt. Lemen and Major Reynolds, both State's witnesses, and stated that, in fact, Appellant's communications in this manner were not violative of the CPO. Entrapment is defined as the inducement by a government agency of another person not predisposed to the criminal act; and if not for the encouragement, the crime is unjustified. See *State v. Doran*, 5 Ohio St. 3d. 187.

Additionally, as stated above, Ohio Rules of Evidence 607 and 608 allow for the impeachment of witnesses based on their character for truthfulness. The State's witnesses, more specifically Major Reynolds, during testimony lied about their knowledge of the CPO while they were communicating with Appellant prior to indictment. The credibility here, or lack thereof, would most certainly substantiate the narrative that this department had coerced and entrapped Appellant into violating a CPO by encouraging his reporting to this law enforcement agency of

the misconduct and despite the fact that Appellant was avoiding that agency initially until [they] contacted him. The exclusion of this critical discovery prevented Appellant from challenging the credibility of Deputy Allen and the State's other law enforcement witnesses, violating his rights to due process and a fair trial.

D. Prosecutorial Duty to Disclose Evidence of Law Enforcement Dishonesty Under Brady v. Maryland

Under *Brady v. Maryland*, 373 U.S. 83 (1963), the prosecution is obligated to disclose evidence favorable to the defendant, including but not limited to evidence that could impeach the credibility of prosecution witnesses. The failure of the prosecution to disclose Deputy Allen's dishonesty during an internal affairs investigation deprived Appellant of his right to a fair trial and undermined his ability to challenge a key witness against him.

The dishonesty of law enforcement officers involved in this case, including but not limited to the discovered false statements during trial, is material to the question of credibility, and such evidence should have been disclosed by the prosecutor. See *Myles v. City of Dayton*, 2d Dist. Montgomery No. 10401, 1987 WL 29451 (Dec. 14, 1987), "Dishonesty by a police officer is particularly contemptible conduct. The lives and the liberty of the criminal accused daily lie in the balance in America's courtrooms. Fair trials depend on the integrity of the police. The public justifiably rely on the honesty of its police. If the public came to believe its police cannot be relied upon to give forthright and honest testimony, law enforcement will suffer a grievous blow." See also *Wortham v. Dayton*, 2023-Ohio-1767, "But where an officer has been found guilty of lying or otherwise untruthful behavior, that information may potentially be used for impeachment purposes as it goes to the credibility of the officer. The credibility of a witness may be attacked on cross-examination regarding specific instances of conduct if, in the discretion of

the court, it is clearly probative of truthfulness or untruthfulness and concerns the witness's character for truthfulness or untruthfulness. *Evid.R. 608(B)"*

E. Constitutional Right to Report Public Misbehavior and Crime is Secured

Appellant's communications with the Clark County Sheriff's Department, including those related to Deputy Allen's misconduct and dishonesty, were protected under the First Amendment. The right to report crime and public misbehavior is a fundamental and secured constitutional right. See *Moldowan v. City of Warren*, 570 F.3d 698, 718 (6th Cir. 2009) ("Moreover, as the Supreme Court has noted, it is "the right and privilege" of individuals "to aid in the execution of the laws of his country by giving information to the proper authorities of violations of those laws," and that right "may properly be said to be secured by the Constitution and laws of the United States." *Motes v. United States*, 178 U.S. 458, 462-63, 20 S.Ct. 993, 44 L.Ed. 1150 (1900).") The decision in *Motes* is deeply rooted in a previous Supreme Court decision, wherein that decision clearly established, "It is the duty and the right, not only of every peace officer of the United States, **but every citizen**, to assist in prosecuting, and in securing the punishment of, any breach of the peace of the United States." *In Re Quarles*, 158 U.S. 532, 535, 15 S. Ct. 959, 39 L. Ed. 1080 (1895). (emphasis added)

Furthermore, in *Brawner v. City of Richland, Texas*, 2022 WL 10663730 (5th Cir. 2022), it was held that reporting public misbehavior is counted as significant public interest and deserves constitutional protection (noting the public interest in the disclosure of misconduct or misfeasance of a police department). See also *Shumpert v. Johnson*, CAUSE NO.: 1:06CV327-SA-JAD (N.D. Miss. Jun. 19, 2008), which aptly quotes both *Quarles* and *Brawner*. Moreover, that duty comes to us as an exchange of civic obligation because reporting criminal

activity [generally] is also an important public concern. *Williams v. Riley*, No. 07-60252, 2008 WL 1859818, *3 (5th Cir. Apr. 25, 2008).

Appellant here was exercising his duty and right to report public misbehavior when he made the communications regarding Deputy Allen's misconduct to her employer. His reporting of law enforcement misconduct in no way constitutes a violation of a civil protection order. Neither was the alleged victim, Deputy Allen, nor was the State entitled to prevent Appellant from reporting criminal or public employee misconduct, as such actions are protected under the First Amendment and cannot serve as the basis of a crime. Appellant's actions of reporting misconduct, including misconduct committed by Deputy Allen, stand on the same ground as this established secured constitutional right, therefore could not be used against him in court, let alone serve as probable cause for indictment or arrest.

F. Truth Cannot be the Subject of Civil or Criminal Sanctions

Finally, the State proposed at trial that the reports of misconduct were not legitimate because they were baseless and unfounded. However, truthfulness was not even a factor determined in the reports, conveniently the same reports that were excluded in trial discovery. In fact, out of the three internal affairs investigations, two of the allegations were found to be not sustained, which is neither a finding of falsity or truth. "Not sustained" is defined by the Notice of Findings/Internal Investigation Report, (Form A-17-056), which states that "the investigation produced insufficient information to prove clearly or disprove the allegation." This same form defines "Unfounded" as "the alleged act did not occur". These are two distinct findings and cannot be confused with each other. The State's created "confusion" of the terms, notwithstanding; the third allegation that Deputy Allen had been dishonest in the second internal investigation, was sustained, therefore truth applies here.

All of the internal affairs investigations were connected to multiple counts of misconduct, including but not limited to audio recorded admissions of contributing to the delinquency of minors in the deputy's home and presence. The only reason that allegation was not sustained by the internal investigation was because the minor who was recorded making the admissions was not interviewed in the internal investigation. If truth would have actually been an issue within these communications to the CCSO, as the State encouraged, Appellant should have also been charged with R.C. 2921.15 for making a false allegation of peace officer misconduct. In fact, the Employee Misconduct document, (Form A-17-020) - used to grieve an employee of the sheriff's department - offers a warning to the Complainant right above the signature line referencing this statute, and states in pertinent part, " *** if the complaint is UNFOUNDED, I could be charged." The State, if they wished to state that Appellant's allegations were unfounded, had an obligation to prove whether the reports to law enforcement were untrue if they wished to continue their criminalization of Appellant; and especially before they stated to the jurors at trial that the allegations Appellant had made were unequivocally "unfounded". This, again, would be considered prosecutorial misconduct under *Giglio*, supra. Moreover, by excluding this discovery, the State, and trial court, precluded Appellant from asserting any defense that the truth of criminal and law enforcement misconduct reports would not be subject to a violation of a CPO. *Brady*, supra.

"Truth may not be the subject of either civil or criminal sanctions where discussion of public affairs is concerned." See *Grimmett vs. Freeman* 59 F. 4th 689 (2023). *** "The Constitution limits state power to impose sanctions for criticism of the official conduct of public officials, in criminal cases as in civil cases, to false statements concerning official conduct made with knowledge of their falsity or with reckless disregard of whether they were false or not."

Grimmett citing *NY Times Co. vs. Sullivan* 376 U.S. 254, “The Supreme Court has emphasized "there is no sound principle which can make [a person] liable" for "publish[ing] the truth," and it has announced a constitutional "rule" that "absolutely prohibits punishment of truthful criticism" even when such criticism is made with "ill will" or "actual malice." *Garrison vs. Louisiana* 379 U.S. 64 (1964). *Grimmett,* citing *Garrison* further, “But, even accepting *Garrison* as good law, that same decision made clear that the First Amendment [**does not**] permit a State to criminalize "true statements," even those "made with 'actual malice.” (emphasis added)

Standing hand-in-hand to truthful “public official” criticism is truthful criticism of private individuals. *State of Minn. v. Timothy Robert Turner,* No. A14–1408 (2015), which aptly cites *NY Times* and *Garrison*, established that Minnesota’s criminal libel statute was unconstitutional. In the *Turner* case the Defendant was found guilty of violating Minnesota’s criminal libel statute after he posted sexually explicit and retaliatory comments on Craigslist about his ex-girlfriend and her minor daughter. The *Turner* court found, “A statute is overbroad on its face if it prohibits constitutionally protected activity [**in addition to**] activity that may be prohibited without offending constitutional rights.” *State v. Machholz*, 574 N.W.2d 415, 419 (Minn.1998). With respect to limitations on speech, a statute is overbroad “if a substantial amount of protected speech is prohibited or chilled in the process” of banning unprotected speech. *Ashcroft v. Free Speech Coal*., 535 U.S. 234, 255, 122 S.Ct. 1389, 1404 (2002). Further in *Turner,* “Therefore, section 609.765's requirement that the truth be communicated with good motives and justifiable ends violates First Amendment protections because it penalizes protected speech—true statements—in addition to unprotected speech—false statements.” *** “Attaching criminal liability to statements of public concern made without a showing of actual malice would chill free political discussion. See *State v. Jude*, 554 N.W.2d 750, 753 (Minn.App.1996). Finally when

reversing the conviction in *Turner*, the court stated as to their determination, "Because the statute penalizes protected, as well as unprotected speech, it is unconstitutionally overbroad and in violation of First Amendment protections…".

The aforementioned cases all center around truth being an affirmative defense, especially when it concerns the specific truthful speech being protected by the constitution. Appellant in this case was not afforded that right of defense, or rather constitutional protection, because the State did not consider truthful reports as something that mattered to the CPO, which placed an impermissible prior restraint upon the Appellant at its inception. Civil protection orders are designed to prohibit acts of violence, including threats of violence [directed at] the protected party(ies). Nothing in the legislation would even come close to constructing such a constriction on speech that would be permissible to preclude someone from reporting criminal activity or public misbehavior, and just by the happenstance that the protected party is the subject of that criminal/misconduct report.

By claiming that the reports were "unfounded" the State created the necessary probative value of the discovery it sought to exclude in its Motion in Limine; subsequently adding the duty to prove that assertion by showing these reports were actually false; and when both the State and the trial court excluded key parts of discovery that would disprove the State's duplicitous claim, they both violated Appellant's right to a fair trial as well as his first amendment protections.

III. CONCLUSION

Appellant's petition for post conviction relief was drafted and filed while he was incarcerated for alleged violations of community control conditions that were later found by this Court to be "overbroad and unduly restrictive as formulated" in the trial court's sentencing on 9 February 2023. See *State v. Allen*, 2023-Ohio-3655. This Court offered guidance to the trial court

narrowing the conditions. While this took place, Appellant's second appeal of the trial court's revocation of his community control was pending at bar. Later, this Court correctly found that the trial court could not have violated Appellant on community control conditions that were invalid at inception, and reversed the trial court's decision of revocation and remanded back for further considerations. See *State v. Allen*, 2024 Ohio 2549. Appellant, while filing his petition during his incarceration, unfortunately was not afforded the ability to gather or present his discovery for review on the merits of his post conviction relief filing. However, since his release, Appellant has been able to retrieve his discovery for proper evidentiary review. Despite this fact, the trial court outright denied Appellant's petition precluding him from an appropriate review of the evidence to correct the errors of the trial as presented. The law, presented above, is clear on the issue. Appellant should be afforded the chance to correct the record that the State and trial court erroneously prohibited from him doing so, at bare minimum.

Additionally, as a matter of law, the initial arrest in Case No. 22-CR-508 was based solely upon a misrepresentation that Appellant's protected speech was violative of the CPO he agreed to by consent in his and Deputy Allen's divorce proceeding; therefore it was unconstitutional. This arrest serves as the direct proximate cause of his violation in Case No. 22-CR-547(A), which is unrelated to Deputy Allen. Appellant was served this unrelated CPO while he was being unlawfully detained for allegedly violating the original CPO from his divorce matter. Chronologically speaking, if the original charge was impermissible under 1st Amendment protections, then any information collected while he was being unlawfully detained is inadmissible to any other criminal act. If an arrest or charge is constitutionally prohibited, any subsequent action directly related to the unlawful arrest is thereby void.

Nardone v. United States, 308 U.S. 338 (1939), followed the decision in *Silverthorne Lumber Co., Inc. v. United States*, 251 U.S. 385 (1920), and expanded the interpretation of the "fruit of the poisonous tree" doctrine, establishing that evidence obtained illegally must be excluded. Appellant's two criminal charges are closely related in time, and had it not been for the unlawful detention of Appellant on the indictment in 22-CR-508, it is axiomatic that the CCSO would not have been able to ascertain any violation of the second CPO in Case No. 22-CR-547(A). It is more reasonable to conclude that there may have been no violation of the second CPO at all; because the duress caused by the first unlawful detention would not be existing, and Appellant would not have made a phone call to a third party communicating his concern over this second CPO and its potential negative effect on the Appellant's minor child. Nonetheless, while Appellant was being unlawfully detained, the CCSO gathered evidence that was tainted from the start, thereby rendering the subsequent charge in 22-CR-547(A) to be erroneously conceived with illegally obtained evidence.

Furthermore, the third charge, Case No. 22-CR-680, was not a violative action. It was a lawful public records request pursuant to R.C. 149.43, and the requested information was relative to another violation of law committed by the same county employee. What should be noted is that this request for the records was actually fulfilled and proved that the employee was [again] in violation of a court order, despite the department encouraging that the request was a violation of the CPO of Deputy Allen. A lawful action being punished by criminal process is retaliatory. Either the request was unlawful, prompting a violation of the CPO, or it was a lawful request, as shown by the fulfillment of the request, and cannot be criminalized. Again, CPO violations are centered on acts of violence or threats of violence [directed at] the protected party(ies). A public records request is no such threat nor an unlawful act.

All of these defense arguments were unlawfully prohibited by violating Appellant's constitutional rights when the State, and by extension the trial court, unlawfully excluded key parts of discovery, including but not limited to substantial evidence proving that subornation of perjury was existing.

For the reasons set forth above, Appellant avers the following in this case applies:

1. **Reversal of the Trial Court's Decision**: The denial of Appellant's post-conviction relief petition without holding an evidentiary hearing constitutes an abuse of discretion. Ohio law is clear that trial courts must conduct an evidentiary hearing where substantive constitutional claims are raised. The failure to do so violated the standards set forth in *State v. Milanovich (1975), 42 Ohio St.2d 46 [71 O.O.2d 26]*.
2. **Remand for an Evidentiary Hearing**: The petition demonstrates substantial evidence of prosecutorial misconduct, law enforcement dishonesty, and improperly excluded discovery materials, all of which require further factual development through a hearing.
3. **Recognition of Violated Rights**: The exclusion of critical discovery, coupled with the prosecutor's failure to disclose impeachment evidence under *Brady v. Maryland* and *Napue v. Illinois*, deprived Appellant of a fair trial. The trial court compounded these errors by failing to allow evidence that would show Appellant's protected constitutional right to report public misconduct and crime, as articulated in *Moldowan v. City of Warren*, 578 F.3d 351 (6th Cir. 2009), and *Brawner v. City of Richland, Texas*, 2022 WL 10663730 (5th Cir. 2022).
4. **Affirmation of Constitutional Protections**: This Court should make clear that the trial court erred in interpreting Appellant's reporting of misconduct as a violation of a civil protection order. Public reporting of misconduct is constitutionally protected and vital to the public interest, as recognized in cases such as *Shumpert v. Johnson*, supra.

WHEREFORE, given these substantial errors, Appellant respectfully requests that this Court reverse the trial court's decision, remand the case for an evidentiary hearing, and grant any other appropriate relief to ensure justice is served.

Respectfully submitted,

_____

Ryan P. Allen, Appellant
144 Tishman St.
Columbus, OH 43228
937.505.7570
ryan.allen84@aol.com

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of this Brief of Appellant Ryan P. Allen was served upon Robert C. Logsdon, Counsel for Appellee, State of Ohio, by electronic mail to rclogsdon@clarkcountyohio.gov the same date the foregoing was mailed for filing.

_____

Ryan P. Allen