

**IN THE SUPERIOR COURT OF ATHENS-CLARKE COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA

v.

NIGEL BROWN,

Defendant

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SU-22-CR-0739

SU-23-CR-0273

FILED IN OFFICE
CLERK OF SUPERIOR COURT
ATHENS-CLARKE COUNTY, GEORGIA

SU23CR0273- H

11/15/2023 4:27PM

Elisa Zarate
ELISA ZARATE, Clerk

MOTION TO COMPEL DISCOVERY AND FOR A GAG ORDER

COMES NOW, NIGEL BROWN, defendant in the captioned action, by and through counsel, and moves this Court to order the District Attorney or her authorized agents to turn over certain evidence in discovery and to provide notice of other evidence as laid out herein. Mr. Brown asserts that he is entitled to this discovery under Georgia law and also federal constitutional law. *See generally* O.C.G.A. 17-16-1 *et. seg.*; *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. U.S.*, 405 U.S. 150 (1972). Notice of the matters laid out herein that is delivered to the Defendant less than ten (10) days prior to trial will not allow effective representation or due process to Mr. Brown.

1. Factual Background

The case before the court revolves around an alleged sexual assault that took place on June 4, 2022. The alleged victim was not a native of Athens and was unable to be located by either party for many months. The case was set for trial on May 8, 2023. Prior to trial, counsel for Mr. Brown made repeated requests for contact information of the alleged victim. These requests were made by:

- General discovery demand filed on September 23, 2022
- Email to Deborah Gonzalez on April 13, 2022
- Email to Deborah Gonzalez on April 28, 2022

Counsel for Mr. Brown was never provided working contact information for the alleged victim. On May 2, 2023, the State moved for a *nolle prosequi* on Mr. Brown's case on the grounds that they

were unable to locate the alleged victim.

Subsequently, a local attorney named Kevin Epps contacted the State, claiming to represent the alleged victim and demanding that the State move to withdraw the *nolle prosequi*. Mr. Epps also contacted the court ex-parte, asking for the court's help in re-activating the case against Mr. Brown. Mr. Epps also participated in at least one news interview where he accused Mr. Brown of committed additional, uncharged crimes and discussed evidence pertaining to the case (specifically, interpreting the results of a DNA test).

The court allowed the *nolle prosequi* to be withdrawn. The State also re-indicted Mr. Brown with the same charges. When discovery was shared with counsel for defense on the "new" case, there was no updated contact information from either the alleged victim or her attorney.

Mr. Brown repeated his request for updated contact information in an email on November 9, 2023. On November 13, the State responded in an email that they would not be providing updated contact information on the request of Kevin Epps. Later that date, the State re-submitted the same witness list with the same lack of information that defense counsel had from April 2023.

2. Mr. Brown is Entitled to Updated Contact Information

Mr. Brown has a statutory right to all current contact information, including current location, phone number and address, of any witness which the State intends to call to testify. *See* O.C.G.A. § 17-16-8. Failure to provide such information can be deemed bad faith. *See, e.g., Carter v. State*, 253 Ga. App. 795, 797 (2002); *Laney v. State*, 271 Ga. 194, 197 (1999), *overruled on other grounds by State v. Lane*, 308 Ga. 10, 838 S.E.2d 808 (2020).

Mr. Brown asks this Court to require the State of Georgia to provide current, updated contact information for all its witnesses, including the alleged victim, no later than ten (10) days prior to trial.

3. Other Communications Intrinsic to the Case

It is abundantly clear to Mr. Brown that the State has been sharing confidential case information with Kevin Epps. It is also clear from a variety of sources, some of which have been emailed to this Court directly, that Mr. Epps has threatened to sue Ms. Deborah Gonzalez if certain legal actions were not taken by herself or her office.

Since Mr. Epps and Ms. Gonzalez have moved their political conflict to Mr. Brown's criminal case, Mr. Brown asserts he should be granted access to any communications between Kevin Epps and the District Attorney's office regarding his case. This evidence is now intrinsic to the prosecution of his case. Further, as Mr. Epps claims to represent the alleged victim, statements he makes on behalf of the alleged victim are "witness statements" subject to the discovery requirements discussed above. *See* O.C.G.A. §§ 17-6-1, 17-6-8.

4. Request for a Gag Order Regarding Mr. Brown's Criminal Case

Mr. Brown is entitled to a fair trial and the due process of law. An essential component of such proceedings is a pool of fairly-minded, impartial jurors with no pre-conceived bias for or against either party.

Mr. Brown's due process rights are severely threatened by the actions of Kevin Epps. By participating in news interviews and accusing Mr. Brown of other, uncharged criminal activity, despite the fact that Mr. Brown has no other pending charges or other allegations of misconduct known to counsel for Mr. Brown at this time, Kevin Epps has interfered with the public opinion of Mr. Brown and this criminal matter. Furthermore, by discussing his opinion of the DNA test results – a piece of evidence Mr. Brown firmly contends was inappropriate information to share with a non-party, since it contains his confidential biological information – Mr. Epps is tainting the ability of the local population to hear and judge the evidence of the case without any pre-conceived bias.

WHEREFORE, Mr. Brown asks this court to (1) hold a hearing on the matters presented in this motion, (2) order the State to turn over an updated witness list with current contact information, (3) order the State to disclose to Mr. Brown any and all communications between the State and Mr. Kevin Epps regarding Mr. Brown's case, and (4) order both the State and Kevin Epps to refrain from any further public discussion of Mr. Brown's case and the evidence with news organizations.

Respectfully submitted, this 15th day of November, 2023.

CERTIFICATE OF SERVICE

This certifies that a copy of this Motion was served on the office of the District Attorney by electronic service.

This 15th day of November, 2023.

/s/ Kaitlyn Beck
Attorney for Defendant
GA Bar No. 833914

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Defendant having submitted for filing the above MOTION TO COMPEL DISCOVERY AND FOR A GAG ORDER, let said motion be filed.

IT IS FURTHER ORDERED that the District Attorney or one of her duly authorized assistants show cause before the Court at the _____ County Courthouse, _____, Georgia, at _____ a.m / p.m., on the _____ day of _____, 20____, why the prayers of the Defendant should not be granted.

SO ORDERED, this _____ day of _____, 20_____.

Judge, Superior Courts
Western Judicial Circuit