

IN THE IOWA DISTRICT COURT IN AND FOR POWESHIEK COUNTY

STATE OF IOWA, Plaintiff, v. CRISTHIAN BAHENA RIVERA, Defendant.	CASE NO. FECR010822 RULING ON DEFENDANT'S MOTION TO COMPEL
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I. STATEMENT OF THE CASE

Defendant was convicted of Murder in the First Degree on May 28, 2021, following a trial by jury. On July 8, 2021, Defendant filed a Motion for New Trial and Motion in Arrest of Judgment. A supplemental Motion for New Trial was filed July 14, 2021. Defendant also filed a Motion to Compel on July 13, 2021, seeking access to information to establish a *Brady* violation. Hearing on the Motion to Compel was held July 15, 2021. The State was represented by Assistant Attorney General Scott Brown and Poweshiek County Attorney Bart Klaver. The Defendant appeared personally with attorneys of record, Chad and Jennifer Frese. Interpreter Steven Rhodes was sworn-in prior to the commencement of the hearing.

II. FINDINGS OF FACT

1. On May 28, 2021, a jury returned a verdict finding the Defendant guilty of Murder in the First Degree. At that time, sentencing was set for July 15, 2021.
2. On July 8, 2021, the Defendant filed a Motion for New Trial alleging, among other arguments, that Defendant had discovered material evidence that could not have been discovered and produced at trial in the course of reasonable diligence. Put briefly,

Defendant asserts that another individual, named Gavin Jones, had confessed to the murder of Mollie Tibbetts, and as a result of an independent investigation, Defendant alleges Jones has ties to a James Lowe and possible sex trafficking ring. Further, Defendant alleges individuals in the trafficking ring are linked with disappearance of Xavier Harrelson from Montezuma, Iowa.

3. Defendant asserts that in order to adequately argue there is newly discovered evidence and a new trial is necessary, he requires information that is in the State's possession. Specifically, Defendant seeks evidence of 1) any sex trafficking investigation involving James Lowe or any other residents of Poweshiek County or adjoining counties; 2) any pending investigations of James Lowe during the period that Mollie Tibbett's went missing and present, and 3) any pending investigations involving Gavin Jones. The State resists the Defendant's Motion in its entirety.

III. PRINCIPLES OF LAW

1. Iowa Court Rule 2.24 concerns post-trial motions in criminal case. A motion for new trial, based upon newly discovered material evidence may be brought under Rule 2.24(2)(8). The necessary elements a defendant must prove to be entitled to a new trial are: 1) the evidence was discovered after the verdict; 2) the evidence could not have been discovered earlier in the exercise of due diligence; 3) the evidence is material to the issues in the case and not merely cumulative or impeaching, and 4) the evidence probably would have changed the result of the trial. *Origer v. State*, 495 N.W.2d 132, 139 (Iowa Ct. App. 1992).
2. When asserting newly discovered evidence under Rule 2.24, a defendant "must produce at the hearing, in support thereof, the affidavits or testimony of the witnesses by whom such evidence is expected to be given."

IV. ANALYSIS

Defendant's Motion to Compel is essentially a request for further discovery after his conviction. The State resists arguing that discovery is pre-trial procedure and there is no rule or case law that supports the proposition the State can be compelled to make disclosures to the Defendant. The Defendant asserts that as he is also alleging a *Brady* violation, it is constitutionally required he be able to conduct a reasonable investigation in order to protect his fair trial rights. The Defendant has; however, produced no legal authority to support this argument.

The Court begins with the question of whether it possesses the authority to order discovery following a guilty conviction. The State is correct that discovery is a pre-trial mechanism and nothing in our rules of procedure or any case specifically recognize a court's authority to compel discovery after a conviction. Nevertheless, the Court is mindful that ensuring due process is afforded to all criminal defendants is not always guaranteed by the rules of procedure alone. The case of *State v. Bertolone*, provides some instruction on the matter. 842 N.W.2d 387, 2013 WL 6116863 (Iowa Ct. App. Nov. 20, 2013). In *Bertolone*, following a bench trial, the defendant was found guilty of sexual abuse. He then appealed, but sought a limited remand while he filed a motion for further discovery and motion for new trial in the district court. Before remand was granted, the district court denied the motion for further discovery. Upon appeal of the denial, the Court of Appeals held that the district court has wide discretion to rule on discovery motions and the district court did not err in denying the defendant's motion. While factually and procedurally distinct from the case at hand, it appears the Court of Appeals recognized the district court could have ordered further discovery if appropriate. While *Bertolone* is an unpublished opinion, and therefore not controlling precedent, the Court finds *Bertolone* persuasive that it does have the authority to compel discovery following a trial when necessary.

Regarding Defendant's first discovery request, evidence relating to any sex trafficking investigation involving James Lowe or any other residents of Poweshiek County or adjoining counties, the Court finds the request overly broad and lacking a nexus to the Defendant. The request would appear to seek information regardless of when the investigation occurred, the outcome of the investigation, or the individuals involved. It is difficult for the Court to see how the great deal of that information could possibly be relevant to the Defendant, to Mollie Tibbetts, or to the Motion for New Trial. Further, those investigations are likely to contain confidential information about a variety of people, and Defendant's examination of those investigations would be nothing more than a fishing expedition.

The second discovery request is for evidence regarding any pending investigations of James Lowe during the period that Mollie Tibbetts went missing up until the present. Under Rule 2.24(2)(8), the Defendant is required to present testimony or affidavits of witnesses by whom such evidence is expected to be given. The Court finds there is a lack of connection as to how this information is relevant to the standard the Defendant must prove for a new trial. Counsel for Defendant have asserted there is a connection between James Lowe and Gavin Jones, but this point has not been articulated by any witness or piece of evidence. A motion for new trial is not an opportunity for the Defendant to investigate third parties unassociated with this case.

Finally, Defendant seeks evidence regarding any pending investigations involving Gavin Jones. It is Jones's alleged confession that Defendant identifies as the newly discovered evidence. It is unclear to the Court why the Defendant would need information about pending investigations regarding Jones when the Defendant, in the Motion for New Trial, asserts he is already in possession of the alleged newly discovered evidence, i.e. the confession. Further evidence regarding Jones would be a fishing expedition and unnecessary for this procedural mechanism.

V. ORDER

IT IS THEREFORE ORDERED the Defendant's Motion to Compel is DENIED.

Hearing on the Defendant's Motion for New Trial and Motion in Arrest of Judgment shall proceed on July 27, 2021 as scheduled.



State of Iowa Courts

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OTHER ORDER

So Ordered

Joel D. Yates, District Court Judge,
Eighth Judicial District of Iowa

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