IN THE IOWA SUPREME COURT
S.C. No. 21-0909
Polk County No. LACL148061

JASON CARTER,
Appellant,

vs.

STATE OF IOWA, MARK D. LUDWICK, Special Agent of the Iowa Dept. of Public Safety, and MARK D. LUDWICK, in his Individual Capacity,
Appellees.

APPEAL FROM THE DISTRICT COURT
FOR POLK COUNTY
HON. WILLIAM P. KELLY

APPELLANT'S FINAL BRIEF
Pursuant to Iowa Rule of Appellate Procedure 6.901(6)

Alison F. Kanne AT0013262

WANDRO & ASSOCIATES, P.C.
2501 Grand Ave., Suite B
Des Moines, Iowa 50312
Telephone: 515/281-1475
Facsimile: 515/281-1474
E-Mail: akanne@2501grand.com

Christine E. Branstad AT0001125
Nathan A. Olson AT0011403
BRANSTAD & OLSON
2501 Grand Ave. Suite A
Des Moines, IA 50312
Telephone: 515/224-9595

Email: Branstad@BranstadLaw.com
Olson@BranstadLaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Treatises

Constitutional Provisions

STATEMENT OF ISSUES FOR REVIEW

ISSUE I: THE STATE IS NOT IMMUNE WHEN AN AGENT LIES, HIDES EVIDENCE, MISREPRESENTS WITNESS STATEMENTS IN REPORTS, MISREPRESENTS EVIDENCE, INTIMIDATES WITNESSES, AND REPEATEDLY FAILS TO FOLLOW CLEAR IMPORTANT LEADS.

State Authorities:

Iowa Constitution

Iowa Const. Article XII, § 1

Iowa Const. Article XII, § 8

Iowa Const. Article XII, § 9

Iowa Supreme Court

Ackerman v. State, 913 N.W.2d 610 (Iowa 2018)

Atwood v. Vilsack, 725 N.W.2d 641 (Iowa 2006)

Baldwin v. City of Estherville, 915 N.W.2d 259 (Iowa 2018)

Beck v. Phillips, 685 N.W.2d 637 (Iowa 2004)

Breese v. City of Burlington, 945 N.W.2d 12 (Iowa 2020)

Girard v. Anderson, 257 N.W. 400 (Iowa 1934)

Godfrey v. State, 878 N.W.2d 844 (Iowa 2017)

Hike v. Hall, 427 N.W.2d 158 (1988)

Krehbiel v. Henkle, 121 N.W. 378 (Iowa 1909)

Madden v. City of Iowa City, 848 N.W.2d 40 (Iowa 2014)

McClurg v. Brenton, 98 N.W. 881 (Iowa 1904)

McGill v. Fish, 790 N.W.2d 113 (Iowa 2010)

Minor v. State, 819 N.W.2d 383 (Iowa 2012)

Muzingo v. St. Luke's Hosp., 518 N.W.2d 776 (Iowa 1994)

Nguyen v. State, 878 N.W.2d 744 (Iowa 2016)

Pierce v. Green, 294 N.W. 237 (Iowa 1940)

Rieff v. Evans, 630 N.W.2d 278 (Iowa 2001)

Southard v. Visa U.S.A. Inc., 734 N.W.2d 192 (Iowa 2007)

Schriner v. Scoville, 410 N.W.2d 679 (Iowa 1987)

State v. Baldon, 829 N.W.2d 785 (Iowa 2013)

State v. Brown, 930 N.W.2d 840 (Iowa 2019)

State v. Pettijohn, 899 N.W.2d 1 (Iowa 2017)

State v. Spier, 173 N.W.2d 854 (Iowa 1970)

State v. Sweet, 879 N.W.2d 811 (Iowa 2016)

State v. Tonn, 191 N.W. 530, 535 (Iowa 1923)

Trobaugh v. Sondag, 668 N.W.2d 577 (Iowa 2003)

U.S. Bank v. Barbour, 770 N.W.2d 350 (Iowa 2009)

Venckus v. City of Iowa City, 930 N.W.2d 792 (Iowa 2019)

Weizberg v. City of Des Moines, 923 N.W.2d 200 (Iowa 2018)

Iowa Court of Appeals

Lennette v. State, 924 N.W.2d 878, 2018 WL 6120049 (Iowa Ct. App. 2018)

Federal Authorities:

U.S. Supreme Court

Burns v. Reed, 500 U.S. 478 (1991)

County of Sacramento v. Lewis, 523 U.S. 833 (1988)

Daniels v. Williams, 474 U.S. 327 (1986)

Davis v. Passman, 442 U.S. 228 (1978)

Forrester v. White, 484 U.S. 219 (1988)

Kalina v. Fletcher, 522 U.S. 118 (1997)

Malley v. Briggs, 475 U.S. 335 (1986)

Rehberg v. Paulk, 566 U.S. 356 (2012)

4th Circuit

Sevigny v. Dicksey, 846 F.2d 953 (4th Cir. 1988)

7th Circuit

Bell v. City of Milwaukee, 746 F.3d 1205 (7th Cir. 1984)

BeVier v. Hucal, 806 F.2d 123 (7th Cir. 1986)

Rossi v. City of Chicago, 790 F.3d 729 (7th Cir. 2015)

8th Circuit

Johnson v. McCarver, 942 F.3d 405 (8th Cir. 2019)

Kuehl v. Burtis, 173 F.3d 646 (8th Cir. 1999)

Neal v. St. Louis Cnty. Bd. of Police Commissioners, 217 F.3d 955 (8th Cir. 2000)

Ulrich v. Pope County, 715 F.3d 1054 (8th Cir. 2013)

Wilson v. Lawrence County, 260 F.3d 946 (8th Cir. 2001)

Zakrzewski v. Fox, 87 F.3d 1011 (8th Cir. 1996)

Treatises:

72 Am. Jur. 2d. States, Etc. § 122

ISSUE II: THE DISTRICT COURT INAPPROPRIATELY WEIGHED MERITS OF CLAIMS AND DEFENSES p.THE MOTION TO DISMISS STAGE - CHAPTER 669 IMMUNITIES DO NOT APPLY TO IOWA CONSTITUTIONAL CLAIMS

State Authorities:

Iowa Supreme Court

Ackerman v. State, 913 N.W.2d 610 (Iowa 2018)

Baldwin v. City of Estherville, 915 N.W.2d 259 (Iowa 2018)

Breese v. City of Burlington, 945 N.W.2d 12 (Iowa 2020)

Madden v. City of Iowa City, 848 N.W.2d 40 (Iowa 2014)

McGill v. Fish, 790 N.W.2d 113 (Iowa 2010)

Rieff v. Evans, 630 N.W.2d 278 (Iowa 2001)

Schriner v. Scoville, 410 N.W.2d 679 (Iowa 1987)

State v. Spier, 173 N.W.2d 854 (Iowa 1970)

U.S. Bank v. Barbour, 770 N.W.2d 350 (Iowa 2009)

Weizberg v. City of Des Moines, 923 N.W.2d 200 (Iowa 2018)

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Lennette v. State, 924 N.W.2d 878, 2018 WL 6120049 (Iowa Ct. App. 2018)

ROUTING STATEMENT

Jason Carter ("Carter") requests this case be *transferred to the court of appeals* because it presents questions regarding application of existing legal principles. IA R. APP. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Beginning June 19, 2015, the day Shirley Carter was killed, DCI Agent Mark Ludwick ("Ludwick") and those under Ludwick's supervision embarked on a smear campaign against Jason Carter with intent to separate Carter from family and from community and with intent to force criminal prosecution. Sunshine is a powerful disinfectant. It illuminates a campaign in which Ludwick lied, hid evidence, misrepresented witness statements in written reports, misrepresented evidence in reports, intimidated witnesses, misled witnesses, and many times over failed to follow clear important leads. Ludwick directed those he supervised to follow his example and even removed a top law enforcement officer from the case for disagreeing with his unsupported theories.

Ludwick convinced Bill Carter, Jason's father, to file a civil suit against Jason with the express purpose of promoting criminal prosecution. Ludwick worked directly with Bill Carter, sharing evidence, planning civil discovery

including deposition questions, and disclosing tailored information from the protected DCI file to unfairly inculpate Jason. Ludwick despicably knew the selected information was misleading and was contrary to verified exculpatory evidence. Based on Ludwick's promotion of the civil suit, Jason was found civilly liable and was denied a genuine 'day in court'.

Shortly after the civil verdict, an arrest warrant issued based on an affidavit based on material omissions, misstatements, and subjective unsupported conclusions. Through the criminal process, Jason learned of Ludwick's misdeeds, investigation failures, lies, and manipulation of Jason's family and of witnesses who attempted to identify Shirley's true killers. With evidence, Jason's criminal jury exonerated him in under two hours.

Based on Ludwick's grievous acts, Jason filed suit, alleging violations of his constitutional rights and of his statutory rights. The district court dismissed Jason's Petition based on immunities. Jason appeals.

STATEMENT OF FACTS

Mark Ludwick was lead investigator for the Shirley Carter homicide and directed law enforcement officers. (Appx. p.6.) Before arriving at the scene, Ludwick made Jason Carter (Shirley's son) his primary suspect. (Appx p.6.) This rash conjecture and related assumptions tainted the investigation and diverted Ludwick's attention and perception throughout investigation. As a result, exculpatory evidence was discarded, destroyed, diverted, and purposefully disguised. (Appx. p.14.)

Ludwick's wrongful actions toward Jason began June 19, 2015 (before Ludwick was on the scene) and continued through the May 2019 criminal trial. Law enforcement received early statements from witnesses who heard: direct confessions, descriptions of the vehicle used, weapon location, and information about the crime that the general public did not know. (Appx. p.22; 33; 45.) As shown below, little attention was paid to evidence that did not fit early speculation by Ludwick. (Appx. p.30.)

Ludwick's bias is patent in the DCI investigation file, written reports, and law enforcement communication. Many reports do not reflect the actual substance of subject interviews; many reports omit exculpatory information. (Appx. p.16.) Ludwick directed Marion County Deputy Kious to disregard

specific exculpatory evidence. (Appx. p.6.) Ludwick misrepresented and omitted exculpatory information in reports, in interviews, and in testimony. Ludwick intimidated and lied to witnesses; Ludwick manipulated and lied to Jason's family. Ludwick did not investigate purported suspect alibis. (Appx. p.11.) Ludwick ignored evidence inculpating other suspects. During the three-plus year investigation, Ludwick never requested analysis of an unknown fingerprint on the gun safe at the homicide scene. (Appx. p.20.) Beginning summer 2015 and continuing into 2017, members of the public reported confessions and information implicating individuals who are objectively likely responsible for Shirley Carter's death. This information was in Ludwick's possession and affirmatively disproves Ludwick's sworn statements in the December 2017 arrest warrant affidavit. Ludwick knew the public could not access the DCI file while the homicide investigation was active and knew his biased actions were protected. Ignoring information for years provides underpinnings of due process violations.

Ignoring Evidence and Fabricating a Case Against Jason

In summer and fall 2015, Ludwick was frustrated (as shown in emails) because he could not convince others to bring charges against Jason. Instead of investigating existing and continuing leads, Ludwick attacked Jason by chipping away at Jason's community and family support. (Appx. p.7.) Ludwick made false statements implicating Jason to his father (Bill Carter), to Jason's siblings (Billy Jr. and Jana), and to Jason's wife Shelly Carter. (Appx. p.19.) Jason's family initially was adamant Jason could not / would not be responsible for his mother's death. (Appx. p.21.)

- To Jana (Jason's sister), Ludwick lied, stating Jason was dishonest with law enforcement, indicating there was conclusive evidence against Jason and insinuating he had proof Jason planted evidence p.the crime scene. (Appx. p.20.) The audio recording of this interaction clearly indicates Jana was persuaded by intentionally false implications. (Appx. p.20.) She left that meeting and told her father, Bill, she learned Jason planted evidence at the scene of the homicide – demonstrably false. (Appx. p.20.)
- To Bill (Jason's father), Ludwick met with Bill "many, many" times, maybe 100, starting shortly after the homicide and continuing during the civil suit. (Appx. p.21.) After a particular meeting with Bill Carter,

Ludwick spoke with another law enforcement officer stating Bill is now "on board" and says, "now we got Bill[y]." (Appx. p.21.) Ludwick states his "biggest concern is that Bill[y] could flip." (Appx. p.21.) The other officer asks if Ludwick's body mic is still on; Ludwick abruptly turns off his mic. (Appx. p.21.)

- To Billy Dean (Jason's brother), Ludwick told Billy Dean that Jason stated Billy Dean was responsible for the homicide – a knowingly false statement. (Appx. p.21.) Billy Dean testified the reason he believed Jason killed Shirley Carter was because of that statement by Ludwick. (Appx. p.21.)
- To Shelly Carter (Jason's wife) Ludwick repeatedly stated he knew Jason was guilty and she could "get on the bus" or be "under it". (Appx. p.22.)

Before Ludwick's campaign, the Carter family was supportive, and Jason was highly regard within the community. Ludwick's false statements to the family did bear (rotten) fruit when he persuaded Bill Carter to take action to assist Ludwick. On January 5, 2016, Bill Carter filed a civil wrongful death lawsuit in Marion County naming Jason as defendant. (Appx. p.7.) During the entirety of the civil lawsuit, Ludwick manipulated the civil discovery process

to gain information and to sway public opinion. Bill Carter[1] served a subpoena to trigger a mock "negotiation" with DCI for "resolution" of the subpoena. (Appx. p.8.) Under Iowa law, DCI could have objected to disclosure, but instead entered an agreement regarding production to aid the civil case goal of propelling a criminal case. (Appx. p.8.) Despite obligation to produce received information, Bill Carter failed to disclose information from DCI to Jason. (Appx. p.8.) Jason now knows excluded discovery contained myriad exculpatory evidence, known to DCI and to Ludwick, shared with Bill Carter, and not shared with Jason. (Appx. p.48.)

Ludwick and law enforcement officers working under Ludwick were entrenched with Bill Carter. They even offered questions to ask Jason in his civil deposition and aided in crafting questions served on Jason through interrogatories and requests for production. (Appx. p.49; 51.)

DCI's and Ludwick's motive in providing misleading evidence to the Carter Family was to achieve a liability verdict and to leverage that verdict into criminal charges. (Appx. p.9.) In later-discovered emails, Ludwick referred to the 2017 civil trial as a "gift." (Appx. p.9.) Ludwick sent an email in which he stated Jason blaming Bill for the homicide, "[would] make the

[1] "Bill Carter" includes his children Jana and Bill Jr. It is evident Bill led all litigation.

criminal case against JASON easier in criminal court . . . Both sides in the civil side told the jury 'The Killer [sic] of Shirley Carter is sitting in this very courtroom.' [That's] a perfect gift for us!!!" (Appx. p.48.) Again, that is before the criminal charge was filed and before Jason knew mounds of evidence implicated Joe Sedlock and the Followills.

Despite being a sequestered witness, Ludwick was aware of who was testifying and when they were testifying during the civil trial. (Appx. p.9.) Ludwick watched some (or all) testimony from the media room. (Appx. p.9.) Ludwick provided testimony updates to other law enforcement officers. (Appx. p.9.) In one email, Ludwick wrote Jason was "on the stand now." (Appx. p.9.) Ludwick contacted media outlets to obtain videos of the civil trial testimony, again, while still under a sequestration order. (Appx. p.10.)

The Marion County Attorney authorized Jason's arrest within hours after the civil verdict. (Appx. p.10.) The following day, Ludwick signed the criminal complaint and affidavit used to request the arrest warrant. (Appx. p.10.) Ludwick intentionally provided false and misleading material information in the criminal complaint requesting the warrant. (Appx. p.10.) He omitted necessary material information from the criminal complaint. (Appx. p.10.) Ludwick was aware Jason had an alibi and was aware the timeline excluded Jason as a suspect in the homicide. (Appx. p.10.) Ludwick

claimed two motives for Jason killing his mother: (1) Jason was in financial straits; and (2) Jason was having an affair; however, at the time he wrote the criminal complaint, Ludwick knew Jason gained nothing financially from Shirley Carter's death, knew there was no evidence showing Shirley discovered Jason was having an extramarital affair, and knew from Bill Carter that Shirley would have supported her son had she learned of that affair. (Appx. p.10; 11.) Ludwick hid forensic evidence exculpating Jason from the homicide. (Appx. p.51; 55.) For example, in a 2016 email Ludwick wrote "standing in one spot" on Carter farm, his phone pinged off three towers. (Appx. p.42.) Ludwick did not provide that information even to the county attorney. Instead, he allowed the state to offer a theory in the 2019 trial that Jason's phone pinging off three towers indicated Jason left the scene to hide a gun. Additionally, Ludwick allowed Bill Carter and attorneys for the state to believe tractor log codes indicated Jason lied about starting a tractor when he arrived at Carter Farms the day of the homicide. (Appx. p.17.) Subsequent testimony showed, prior to Jason's arrest, the witness contacted Ludwick to tell him the log code information was incorrect. (Appx. p.17.) Ludwick did not write a report or inform any party the tractor codes information was wrong. (Appx. p.17.)

Even while possessing myriad statements and evidence implicating specific individuals in the homicide, Ludwick doggedly pursued Jason and refused to investigate leads pointing to specific suspects. (Appx. p.11.) In fact, Ludwick knew in 2015 that Joe Sedlock, Callie Shinn, John Followill, and Joel Followill were implicated in the homicide by numerous individuals. (Appx. p.11.) Ludwick knew individuals reported confessions and other inculpatory statements from Sedlock, Shinn, and the Followills. (Appx. p.11.) Because that information did not match his obsession, Ludwick ignored that evidence. (Appx. p.45.) Leads, tips, and community information poured into law enforcement from June 2015 until after the December 2017 civil verdict. Ludwick and DCI performed no investigation from the civil suit initiation in January 2016 through criminal deposition in summer 2018. (Appx. p.11, 48.) These failures were discovered through the criminal discovery process. (Appx. p.30.) Some of the most egregious acts and omissions were discovered just before (**and during**) the March 2019 criminal trial. (Appx. p.18, 42.)

For years before the criminal trial, Ludwick denied even basic knowledge of exculpatory evidence. For example, alleged homicide weapon was a .270 rifle purportedly removed from the Carter gun safe. (Appx. p.13.) There is one still unidentified fingerprint on the gun safe. (Appx. p.14.) In Jason's civil trial, Ludwick testified he was unaware of an unidentified

fingerprint on the gun safe. (Appx. p.14.) However, at the criminal trial, Ludwick testified he knew about the unidentified fingerprint at the time he testified in the civil trial but it 'slipped his mind'. (Appx. p.14.) Ludwick admitted he did not attempt to use law enforcement databases to look for matches. (Appx. p.14.) It is unknown if the questioned fingerprint was ever analyzed. (Appx. p.14.) This plainly could be evidence connecting the killer to the crime scene; in six-plus years since the homicide, Ludwick has not done the basic action of searching a law enforcement database for the fingerprint match. (Appx. p.14.)

Ludwick either intentionally hid information or was a horrendous recordkeeper. Many reports, recordings, and evidence were lost, mislabeled, or inscrutable. (Appx. p.14.) Ludwick referred to a "box" containing homicide investigation evidence. (Appx. p.14.) After agreeing to bring the box to the second day of deposition in July 2018, he forgot the "box" or any related evidence but then claimed he already provided all evidence. (Appx. p.14.) The Friday before trial, Jason's counsel went to Marion County Sheriff's Office to review physical evidence for transport to trial. (Appx. p.14.) In addition to finding physical evidence never previously identified, Jason's counsel found a box with an evidence log indicating the box contained ninety-three discs and USB drives of evidence. (Appx. p.15.) The evidence log indicated the box was

delivered by Ludwick to Marion County. (Appx. p.15.) The box only contained eighty discs and drives. (Appx. p.15.) To date, neither Ludwick nor the State can explain what happened to the thirteen missing discs and drives. (Appx. p.15.) Jason's counsel was at the Marion County Sheriff's Office ("MCSO") for 10.5 hours just three days before trial, downloading this "new" evidence. (Appx. p.15.) It should be noted, the defense repeatedly requested missing audio files throughout discovery. (Appx. p.15.) Some audio files were obtained. (Appx. p.15.) Some were in this box. Many were never provided. (Appx. p.15.) Shockingly, disclosure of Ludwick's emails by court order (received during the criminal trial) revealed Ludwick sent an email to a co-worker regarding the missing audio files in which he stated: "The missing audio files are causing me problems…I'm working on them, but we might need to say 'maintained by MCSO' if I can't get them to copy over." (Appx. p.15.) Ludwick intentionally hid undisclosed evidence in a mislabeled box in an evidence room. Ludwick never told counsel the files were "maintained by MCSO". The box was only discovered when counsel was reviewing physical evidence.

Ludwick and those under his direction wrote and submitted reports which were false, inaccurate, and incomplete. (Appx. p.16.) For example:

- Curt Seddon testified in the civil trial and in the criminal trial that Jason Carter made a statement indicating there were "two holes" at the crime scene (purportedly showing premature knowledge of how many times Shirley Carter was shot). (Appx. p.18.) Ludwick had undisclosed notes from September 2015 showing Seddon heard both Jason Carter **and** Bill Carter make the "two holes" statement. (Appx. p.18.) (The notes were found in Ludwick's emails – again received during trial, provided pursuant to court order to compel disclosure). (Appx. p.18.)
- Brian Titus was contacted by Ludwick to address whether log codes would show a tractor was run at a certain time. (Appx. p.17.) Titus originally told Ludwick certain codes would indicate the tractor had run. (Appx. p.17.) When Titus realized he was wrong, he contacted Ludwick prior to charges being filed to update the information. (Appx. p.17.) Ludwick never updated his written report or the DCI file, and the State relied on incorrect information in charging Jason. (Appx. p.17.)
- Ludwick's report of an interview with Rex DeMoss indicates DeMoss described Jason as a "hothead." (Appx. p.16.) Rex DeMoss testified he never described Jason as a hothead, and he did not believe Jason to be a hothead. (Appx. p.16.)

- Ludwick's report of an interview with Barry Griffith indicates Griffith recalled a dispute between Michael McDonald and Jason in which Jason was more upset than McDonald. (Appx. p.16.) Griffith testified he told Ludwick the opposite—Jason handled the dispute reasonably and McDonald was upset. (Appx. p.16.)
- Ludwick's report of an interview with Sean Gordon addressing motive indicates Jason asked Gordon to call Shirley Carter to ask Bill Carter if Jason and Bill Carter could "just farm together." (Appx. p.17.) Gordon testified he had made no such statement to Ludwick. (Appx. p.17.)
- Melissa Farrell contacted law enforcement with information about the homicide. (Appx. p.17.) She spoke with Detective Kious, who was under Ludwick's supervision. (Appx. p.17.) Following review of Kious' written statement, Ms. Farrell indicated the report omitted specific exculpatory evidence she provided. (Appx. p.17.)

Ludwick ignored exculpatory evidence. Evidence of the unconscionably incomplete and failed investigation includes:

- Multiple individuals implicated Rory Pearson as an accessory after the fact. (Appx. p.19.) According to law enforcement, Rory Pearson was interviewed multiple times. (Appx. p.19.) There is one audio recording

of Rory Pearson. (Appx. p.19.) There are no provided reports or recordings of additional interviews. (Appx. p.19.)

- One month after Jason was charged, Wendy Bonnett told Ludwick John Followill, Joel Followill and Joe Sedlock killed Shirley, and Bonnett was in a car with Jordan Durham (dating one of the Followills) when Bonnett heard Joel Followill confess to the homicide. (Appx. p.22.) Ludwick gathered no information to investigate this confession, but instead told Bonnett that Jason and his legal team will try to pin the murder **on her**. (Appx. p.23.) After that statement, Bonnett stopped trying to share information with Ludwick and Ludwick did not ask follow-up questions. (Appx. p.23.) Jason's attorneys never heard Bonnett's name until criminal discovery. (Appx. p.23.)
- Jason Ford, an experienced EMT, was one of the first on the homicide scene. Ford stated to Ludwick it was clear Shirley Carter died at least an hour or two before Ford arrived on scene (providing alibi to Jason). (Appx. p.23.) Ludwick aggressively shut down Ford's statements, made no record of the statements, and collected no physical evidence to ascertain time of death. Counsel found Ford's statements only through reviewing audio recordings from officer body mics.

- A July 2018 email that Ludwick sent to himself (disclosed during the criminal trial through court order) addresses Ludwick's interview of Michelle Daniels. (Appx. p.26.) This email is difficult to comprehend due to typos, syntax and word usage, but included relevant, exculpatory information given to Ludwick from Daniels, including information about: the car used in the homicide, the possible homicide weapon, details of the homicide, and motive for the robbery/homicide. (Appx. p.26-27.) This email was not provided to Jason through discovery, neither was any related report nor recording. (Appx. p.27.) Carter's counsel discovered the information by reviewing Ludwick's emails. (Appx. p.26.)

Many interviews never occurred, were not recorded, or lacked minimally-adequate follow-up:

- Jeremiah Laird is the nephew of a Marion County resident named Sherry Carter (coincidentally close in sound to Shirley Carter). (Appx. p.27.) Laird was identified as an associate of the Followills and of Sedlock. (Appx. p.27.) Sherry Carter received prescription pain killers. (Appx. p.27.) More than one witness indicated Sedlock and the Followills committed the homicide during a burglary (for pain

medication) gone wrong when Shirley surprised the burglars. (Appx. p.33; 35.) at least one witness believed Shirley to be related to Laird. (Appx. p.27.) Clearly, Shirley Carter could have been mistaken for Sherry Carter by Sedlock and the Followills when planning the burglary. Despite specific connection between Laird and the homicide, Ludwick directed Kious to not interview Laird. Laird is deceased. (Appx. p.29.)

- An unidentified caller advised Marion County Sheriff's Office "the rumor among the kids in Knoxville is that Joel Followill killed Mrs. Carter." (Appx. p.29.) at the direction of Ludwick, this caller was not contacted. (Appx. p.29.)
- Callie Shinn was identified by multiple witnesses as connected with the homicide. Callie's sister Amber reported to Ludwick "[Callie] tried really hard to convince [Amber] that [Amber] did drive to the crime scene on the day of the homicide." (Appx. p.30.) Ludwick's emails indicated a video of the interview contained more complete information; however, the video was never provided to Jason. (Appx. p.30.) No follow up was completed. Amber Shinn is deceased. (Appx. p.30.)

- Joe Sedlock gave statements to law enforcement indicating he knew a rifle was used in the homicide and stating Jason Beaman was his source of information. (Appx. p.30.) In fall 2015 (exact date unknown because law enforcement did not write a report until long after the interview), Tameka Jenkins told law enforcement, Jason Beaman stated "they weren't going to find the gun". (Appx. p.30.)
- Jason Beaman's phone number appears in cell tower records showing him in the vicinity of the homicide scene on the date of the homicide (information found by the criminal defense team and not pursued by law enforcement). (Appx. p.31.) Ludwick, however, testified he had "run" Beaman's number through the cell tower records and it was not there. (Appx. p.31.) This was knowingly false. (Appx. p.31.) Although Ludwick became aware of Beaman's possible connection in October 2015, Beaman was not interviewed until May 2018. (Appx. p.31.)
- Charity Roush told law enforcement Jason Beaman and Joe Sedlock were trying to get rid of Callie Shinn's Bonneville, which she believed was used in the homicide. (Appx. p.31.) No follow up occurred.
- Law enforcement received a tip in April 2016 that the homicide weapon may be hidden at the home of Chris Brees. (Appx. p.31.) Brees was

interviewed in June 2018–Kious tells Brees he is following up on a "BS tip." (Appx. p.31.)

- Ludwick learned John Followill worked at Morris Roofing, and Morris Roofing re-roofed the Carter farmhouse before the homicide. (Appx. p.32.) Importantly, Michelle Daniels told law enforcement John Followill knew Bill and Shirley Carter would leave their home to get coffee every morning. (Appx. p.32.) Ludwick did not ask the owner of Morris Roofing the dates John Followill was employed or anything related to Followill. (Appx. p.32.) Ludwick initially testified John Followill did not work for Morris Roofing while Morris Roofing re-roofed the Carter home. (Appx. p.32.) Under cross-examination, Ludwick admitted he did not know because he did not obtain that information from Morris. (Appx. p.32.) Morris is now deceased.
- Kory Ford was identified to law enforcement in June 2018, as a person involved in disposal of the homicide weapon. (Appx. p.32.) He was not interviewed until November 2018 and February 2019. (Appx. p.33.) Kory Ford provided information about a possibly-involved vehicle and stated he heard Joe Sedlock admitted the homicide. (Appx. p.33.) No follow up occurred.

- John Followill identified Emily Gullion as his alibi; Gullion was interviewed nearly three years later. (Appx. p.33.) Kious, acting under Ludwick's supervision, immediately told Ms. Gullion she is John Followill's alibi for June 19, 2015. (Appx. p.33.) Gullion denied knowledge of where John Followill was on the date of the homicide (but seems to remember the date of the homicide). (Appx. p.33.) Gullion remembered John Followill blaming Joe Sedlock and Christa Norris for the homicide and said John Followill told her the homicide was over "pain patches." (Appx. p.33.) No follow up occurred. Despite Gullion stating she did not know where Followill was during the homicide, Kious reported and testified Gullion corroborated "most of" John's story. (Appx. p.34.) at the time Detective Kious falsely testified Gullion corroborated John Followill's alibi, defense counsel did not have the recorded interview disproving Kious' statements. (Appx. p.34.)
- Charity Roush was identified to law enforcement in 2015 as a person who was paid $100 to clean "evidence" of the homicide out of a car. (Appx. p.34.) Roush was interviewed in November 2018. (Appx. p.35.) The written report is shockingly different from the audio recording. The audio recording provides specific statements about Sedlock's

confession to Roush, other statements about the homicide, and the motive to sell the car. (Appx. p.35.) The written report excludes most of Roush's statements, but indicates Roush stated most of what she heard was "gibberish." (Appx. p.35.) The audio recording contains no such statement from Roush and lays bare numerous misrepresentations in the written law enforcement report. (Appx. p.35.)

- Joe Sedlock told law enforcement his wife, Nichole Sedlock, had knowledge of the Followills' involvement in the homicide. (Appx. p.35.) Christa Norris testified she told Detective Kious that Nichole Sedlock told Norris about Joe Sedlock's involvement in the homicide and admitted helping Joe Sedlock cover up the homicide. (Appx. p.36.) Roush provided corroborated details about motive to rob the house, details in the house, plans, people involved and statements after the fact. (Appx. p.36.) Ludwick, Kious, and law enforcement did not interview Nichole Sedlock until December 2018. (Appx. p.36.)
- At some unrecorded/unreported time, Ludwick became aware Kevin Weldon may have information about the homicide. (Appx. p.36.) When Weldon was interviewed, he told law enforcement around the time of the homicide, Rory Pearson was hysterical, said he'd done something "really wrong" and kept asking how he was going to get the stains off

his hands. (Appx. p.36.) Weldon stated Pearson said he "killed her," he was with the Followills "that night," "[he] didn't mean to," "she wouldn't shut up," "she wouldn't stop screaming," "how am I ever going to get these stains off of my hands," and "how am I ever going to get these stains off my brain." (Appx. p.36; 37.) Weldon also had potential information about the homicide weapon. (Appx. p.37.) Law enforcement did not follow up on this information until shortly before the 2019 criminal trial. (Appx. p.37.) Notably, Pearson was identified as a suspect or person with knowledge by multiple people. Pearson reportedly left Iowa for Wyoming shortly after the 2015 homicide. Law enforcement, including Ludwick and Kious, represented they interviewed Pearson several times. (Appx. p.37.) No reports or audio recordings of these interviews exist. (Appx. p.37.)

- Melanie Shives and her son Jacob attempted to provide information to law enforcement in November 2017 and in June 2018, indicating Joe Sedlock and Callie Shinn were responsible for the homicide, and giving information about the weapon. (Appx. p.38.) Despite corroborated statements given to law enforcement, the Shives were never interviewed. (Appx. p.38.)

- David Johnson drove past Carter farms at approximately 10:30AM the morning of the homicide and saw a stationary light blue car near the scene. (Appx. p.38.) Johnson told law enforcement he got a good look at the driver and felt he could identify the driver from photographs. (Appx. p.38.) Law Enforcement never followed up with Johnson to show him photographs or to gain information. (Appx. p.39.) The blue car was potentially owned by Joe Sedlock. (Appx. p.39.)
- Ludwick claims Bill told law enforcement he had been giving Jason between $100,000 and $150,000 a year, which fed into Ludwick's motive and conjecture. (Appx. p.39.) Ludwick was directed to follow up on this information, and actually had Bill Carter's financial information, which directly refuted Bill's statements. (Appx. p.39.) Ludwick did not follow up, which would have shown Bill's statement was false. (Appx. p.39.)
- Ludwick failed to investigate phone numbers associated with Joe Sedlock and Jason Beaman, which numbers appeared in the cell phone tower records for one of the closest cell towers to the location of the homicide, and on the morning of the homicide at approximately 9:30AM (which is the approximate time a forensic pathologist placed time of death). (Appx. p.41.)

Finally, and most damning, Ludwick, and officers working under his direction, misrepresented the existence of and strength of evidence against Jason, sharing information and working directly with Bill Carter to prepare the civil case against Jason, and the criminal case against Jason. (Appx. p.13.) It is clear from statements of Bill Carter's own counsel that Ludwick and Bill Carter commingled information, and Ludwick's knowledge of other suspects and information was shared with the civil plaintiffs.

- Bill Carter's counsel stated the Civil Plaintiffs had "long been aware of the other suspects from early in the investigation" but said "they were discounted as possibilities based on a 'complex analysis of lots of factors.'" (Appx. p.12.) He added "[t]here is nothing of substance new to our side in this motion." (Appx. p.12.) Ludwick, DCI, and Bill Carter did not share this information with Jason before or during trial, in violation of civil discovery rules and in an obvious and purposeful attempt to prevent Jason from presenting the information to the civil jury. (Appx. p.12-13.)
- Bill Carter used a single piece of evidence from the DCI file in the civil suit, which, when isolated, tended to make Jason appear guilty; Jason's fingerprints were on the gun safe that may have held the homicide

weapon. (Appx. p.9.) Ludwick and the State omitted significant exculpatory information, including information affirmatively showing Jason (1) gave that gun safe to Bill Carter fifteen years previously, and (2) assembled that gun safe, which explain Jason's fingerprints on the safe.

- Kious admitted, in order to prepare for his criminal deposition, he reviewed a civil transcript provided by Lynnette Castillo (Bill Carter's live-in friend) who had "been providing [him] some information." (Appx. p.49.)
- Ludwick for years alleged cell tower records showed Jason left the crime scene and came back before law enforcement arrived, purportedly to hide the homicide weapon. Jason's cell phone pinged (communicated with) different cell phone towers shortly after he found his mother. (Appx. p.42.) Law enforcement falsely argued the only way Jason's cell phone would have pinged other towers is if Carter left the scene. (Appx. p.42.) Since 2016, Ludwick had undisclosed knowledge that multiple cell towers service Bill and Shirley Carter's residence — Ludwick's phone pinged multiple towers while standing in one place at Carter farms, just as Jason's phone did. (Appx. p.42.) That information

was found **during** the criminal trial in Ludwick's emails after an expert testified to the contrary. (Appx. p.42.)

The totality of information in the DCI case file, and that known and available to Ludwick, would not provide probable cause to issue an arrest warrant or to charge Jason with Murder. (Appx. p.68.) Ludwick and law enforcement knew the above exculpatory information prior to the Marion County civil trial, and prior to Ludwick signing the criminal complaint used to request the arrest warrant. (Appx. p.7; 8; 11; 14; 19; 20; 21; 22-23; 24; 28; 29; 32; 37; 38; 39; 42; 45; 57.) That complaint included false and misleading information, and omitted material information which directly weighed on the determination of probable cause. (Appx. p.10.) Ludwick blindly ignored significant information showing Jason had an alibi excluding him as a suspect. Ludwick ignored significant information showing Jason had no financial motive to kill Shirley. (Appx. p.10.) Ludwick had zero evidence supporting his theories. Ludwick falsely averred Jason made unidentified "inconsistent statements" in the warrant application (see case law below[2]). (Appx. p.11.) Ludwick cannot support his allegations with evidence.

[2] "Unquestionably, a warrant issuing magistrate, in determining the matter of probable cause, must judge for himself the persuasiveness of facts relief on by

Jason filed suit, alleging the violations of his constitutional and statutory rights and requesting his day in court to shed light on the grievous actions of Ludwick and those under his supervision and control, and to protect others from having these abuses leveled against any other person under the auspices of a criminal investigation. The district court granted the State's motion to dismiss all counts. He appeals, requesting this court protect his right to access to the courts, affirm the recent opinions in multiple cases issued from this court, and provide Iowans the guarantee no person, not even a law enforcement officer, is above the law and above the constitution.

I. THE STATE IS NOT IMMUNE WHEN AN AGENT LIES, HIDES EVIDENCE, MISREPRESENTS WITNESS STATEMENTS IN REPORTS, MISREPRESENTS EVIDENCE REPORTS, INTIMIDATES WITNESSES, AND REPEATEDLY FAILS TO FOLLOW CLEAR IMPORTANT LEADS.

a. Preservation of Error

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an applicant, mere conclusions being totally inadequate. Thus, a magistrate is required to make an objective determination of the factual situation presented to him on oath or affirmation, mere subjective findings or conclusions of an applicant-officer being insufficient and of no probative value." *State v. Spier*, 173 N.W.2d 854, 858–59 (Iowa 1970) (citations omitted).

In his resistance to dismissal, and during hearing on the motion, Jason argued neither sovereign immunity, qualified immunity, nor judicial process immunity, apply to protect the State from Jason's claims. (Appx. p.82-83; Apr. 2021 Trans.) The District Court dismissed Jason's claims on both sovereign immunity and judicial process immunity grounds. (Appx. p.93-126). Error is preserved on this issue.

b. Standard of Review

Iowa appellate courts review a district court ruling granting a motion to dismiss for correction of errors at law. *Ackerman v. State*, 913 N.W.2d 610, 614 (Iowa 2018); *Madden v. City of Iowa City*, 848 N.W.2d 40, 44 (Iowa 2014).

"A motion to dismiss should not be liberally granted." *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001). Under Iowa's established standard for a motion to dismiss under rule 1.421(1)(*f*), the court accepts facts alleged in the petition as true. *McGill v. Fish*, 790 N.W.2d 113, 116 (Iowa 2010). Dismissal is proper "'only if the petition shows no right of recovery under any state of facts.'" *Southard v. Visa U.S.A. Inc.*, 734 N.W.2d 192, 194 (Iowa 2007) (quoting *Comes v. Microsoft Corp.*, 646 N.W.2d 440, 442 (Iowa 2002)). Courts review the "petition in its most favorable light, resolving all doubts

and ambiguities in [the plaintiff's] favor." *Schriner v. Scoville*, 410 N.W.2d 679, 680 (Iowa 1987). The Iowa Supreme Court describes the standard:

> In considering a motion to dismiss, the court considers all well-pleaded facts to be true. A court should grant a motion to dismiss only if the petition on its fact shows no right of recovery under any state of facts. Nearly every case will survive a motion to dismiss under notice pleading. Our rules of civil procedure do not require technical forms of pleadings . . . .
>
> A petition need not allege ultimate facts that support each element of the cause of action; however, a petition must contain factual allegations that give the defendant fair notice of the claim asserted so the defendant can adequately respond to the petition. The fair notice requirement is met if a petition informs the defendant of the incident giving rise to the claim and of the claim's general nature.

U.S. Bank v. Barbour, 770 N.W.2d 350, 353 (Iowa 2009) (citations, quotations, and brackets omitted).

The sole issue when considering a motion to dismiss is the "petitioner's right of access to the district court, not the merits of his allegations." *Rieff*, 630 N.W.2d p.284 (citations and quotations omitted). "Very little is required in a petition to survive a motion to dismiss." *Id. p.*292. "Generally, a motion to dismiss should not be granted. [The Iowa Supreme Court] ha[s] stated that nearly every case will survive a motion to dismiss under notice pleading." *Weizberg v. City of Des Moines*, 923 N.W.2d 200, 217 (Iowa 2018) (quotations omitted). Further, Iowa courts do not require a petition to allege a specific legal theory. *Rieff*, 630 N.W.2d p.282.

Appellate courts do not consider facts contained in the motion to dismiss. *See McGill v. Fish*, 790 N.W.2d 113, 116 (Iowa 2010).

"To the extent that [appellate courts] review constitutional claims, our review is de novo." *Id.* p.116–17.

c. Due Process and the Right of Judicial Access are Self-Executing Constitution Rights

Sovereign immunity does not apply to Jason's constitutional due process tort claims because the State waived sovereign immunity through enumerated self-executing constitutional rights.

i. The State waived sovereign immunity for Carter's due process and judicial access-type claims.

Article I, section 9, as recognized by the Iowa Supreme Court stated in *Godfrey*, is self-executing:

> In short, we have found the due process clause of article I, section 9 enforceable in a wide variety of settings. Iowa courts have ensured, to use *Davis* language, that "the right given may be enjoyed and protected." [*Davis v. Passman*, 179 U.S. 228, 403 (1979)]. The Iowa constitutional provision regarding due process of law is thus not a mere hortatory command, but it has been implemented, day in and day out, for many, many years. It has traditionally been self-executing without remedial legislation for equitable purposes, and there is no reason to think it is not self-executing for the purposes of damages at law.

Godfrey v. State, 878 N.W.2d 844, 871 (Iowa 2017); *see also id.* p.846-47; 898 N.W.2d p.880 (Cady, J., concurring) (recognizing a tort claim under the Iowa Constitution when no adequate remedy exists). While the Court reserved the question of qualified immunity, the general principles of *Godfrey* should be consistently applied and preclude the legislature from excepting these claims due to the supremacy of the Iowa Constitution and the law set forth in *Godfrey*.

"When faced with the question of whether a government official has absolute immunity from civil liability . . . [Iowa courts] employ a 'functional approach' to determine whether those actions 'fit within a common-law tradition of absolute immunity." *Venckus v. City of Iowa City*, 930 N.W.2d 792, 800 (Iowa 2019) (quoting *Minor v. State*, 819 N.W.2d 383, 394 (quoting *Buckley v. Fitzsimmons*, 509 U.S. 256, 269 (1993)). Under the "functional approach," courts do not look to the identity of the government actor, but instead to "the nature of the function performed." *Forrester v. White*, 484 U.S. 219, 229 (1988). Courts only grant absolute immunity for

> those governmental functions that were historically viewed as so important and vulnerable to interference by means of litigation that some form of absolute immunity from civil liability was needed to ensure that they are performed "with independence and without fear of consequences."

Rehberg v. Paulk, 566 U.S. 356, 363 (2012) (quoting *Pierson v. Ray*, 386 U.S. 547, 554 (1967)).

Courts then evaluate "the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those functions", *Forrester*, 484 U.S. p.224, and whether absolute immunity "free the judicial process from the harassment and intimidation associated with litigation." *Burns v. Reed*, 500 U.S. 478, 494 (1991).

Ludwick is not entitled to absolute immunity simply because of status as a government employee. *Hike v. Hall*, 427 N.W.2d 158, 159 (1988). "The presumption is that qualified rather than absolute immunity is sufficient to protect government officials in the exercise of their duties." *Burns*, 500 U.S. p.486-87. Therefore, courts must "be sparing in [their] recognition of absolute immunity." *Beck v. Phillips*, 685 N.W.2d 637, 643 (Iowa 2004).

Self-executing constitutional provisions that allow claims for money judgments constitute a waiver of sovereign immunity that may not be legislatively amended. *See* 72 Am. Jur. 2d. States, Etc. § 122.

> Consent to be sued may be given or expressly authorized by the state constitution. Some constitutional provisions are self-executing and thus constitute a waiver of sovereign immunity. However, a state constitutional provision that suit may be brought against the state in the manner provided by law is not self-executing, so a state with this type of provision may not be sued in the absence of enabling legislation.

Id. (footnotes omitted). The Iowa Supreme Court holds Article I, sections 8 and 9 are each self-executing and allow for tort money damages in a suit against the State. *See Godfrey v. State*, 898 N.W.2d 844, 871; 898 N.W.2d p.880, 881 (Cady, J., *concurring*). Therefore, sovereign immunity for at least these claims is waived through constitutional enactment.

ii. There is no adequate remedy p.law for Carter's Substantive Due Process claims.

The Iowa Supreme Court "recognize[s] a tort claim under the Iowa Constitution when the legislature has not provided an adequate remedy." *Godfrey*, 898 N.W.2d p.880, Cady, C.J., *concurring*). Importantly, , an "appropriate case" for the recognition of a constitutional tort through a self-executing provision would involve "infringement of physical security, privacy, bodily integrity . . ." *Id. p.*881 (Cady, C.J., *concurring*). Article I, section 9 takes effect without enabling legislation. It is complete in itself. Because it is self-executing, this court is "in a position to award traditional damages." *Id.* p.868.

Jason's claims are squarely within those recognized by *Godfrey*, as Jason alleges violations of his privacy rights, his family integrity, and his physical and bodily integrity against Ludwick and the State. (Petition.) Even though Jason's claims may have aspects of chapter 669 excepted claims, the

claims are wholly different and broader than excepted claims. Jason would have no adequate remedy if not allowed to proceed with substantive due process claims under the Iowa Constitution. At the motion to dismiss stage, taking all facts pled in his petition as true, the district court erred in dismissing Jason's constitutional claims based on sovereign immunity.

d. The Right to be Free from Unreasonable Searches and Seizures is a Self-Executing Constitutional Right

i. The State waived sovereign immunity for Carter's unreasonable search and seizure claim

The Iowa Supreme Court is clear that Article I, section 8 of the Iowa Constitution is self-executing. *Godfrey*, 898 N.W.2d p.871, 881 (Cady, J., concurring). As the constitution is the supreme law of the land, its mandates may not be legislatively undone. *See* Iowa Const. Article XII, § 1 ("This constitution shall be the supreme law of the state, and any law inconsistent therewith, shall be void."). This is supported by federal precedent as described in *Davis v. Passman*, 442 U.S. 228, 403 (1978):

> A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, . . . and it is not self-executing when it merely indicates principles . . .
>
> . . . In short, if [it is] complete in itself, it executes itself.

442 U.S. p.403. "Ordinarily, a self-executing provision does not contain a directive to the legislature for further action." *Godfrey*, 898 N.W.2d p.870. "A provision is self-executing when it takes effect immediately 'without the necessity for supplementary or enabling legislation.'" *Id.* (citations omitted). In *Passman*, the Court found rights guaranteed in the Constitution "to be more than mere wishes or requests, litigants must be able to enforce those rights in the courts when there is no other effective means to enforce them." *Id.* (citing *Passman*, 442 U.S. p.242).

Beginning at the turn of the last century, and again far ahead of its federal counterpart,[3] the Iowa Supreme Court in several cases held the search and seizure clause of the Iowa Constitution "supported an action for damages without implementing legislation." *Godfrey*, 898 N.W.2d p.862. *See, e.g.*, *McClurg v. Brenton*, 98 N.W. 881, 882 (Iowa 1904) (reversing a directed verdict in favor of the defendants on a claim for damages against an officer who conducted a warrantless search); *Krehbiel v. Henkle*, 121 N.W. 378, 379-80 (Iowa 1909) (the right of citizens to be secure in person and property against wrongful seizures and searches is "zealously safeguarded and has

[3] The United States Supreme Court's landmark holding in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, was handed down in 1971. The Iowa Supreme Court recognized Iowa constitutional claims for damages beginning in 1904.

express recognition in our State Constitution" and holding it was "thoroughly well settled" a violation of this right without reasonable ground therefor gives the injured party a right of action."); *State v. Tonn*, 191 N.W. 530, 535 (Iowa 1923) ("[a] trespassing officer is liable for all wrong done in an illegal search or seizure" and holding the right against unreasonable searches and seizures was "a sacred right, and one which the courts will rigidly enforce."); *Girard v. Anderson*, 257 N.W. 400, 403 (Iowa 1934) (holding search and seizure provisions of the Iowa Constitution are self-executing); *Pierce v. Green*, 294 N.W. 237, 245 (Iowa 1940) ("[W]here the law imposes a duty upon a state officer and his refusal or failure to perform it affects injuriously . . . the personal or property right of an individual, it cannot be that the court is without power or authority to administer an appropriate remedy.").

The Iowa Supreme Court is clear that Article I, section 8 of the Iowa Constitution is self-executing. As the constitution is the supreme law of the land, its mandates may not be legislatively undone. *See* Iowa Const. Article XII, § 1 ("This constitution shall be the supreme law of the state, and any law inconsistent therewith, shall be void."). Therefore, the questions of functional equivalency based on a statutory exception are irrelevant when reviewing claims for violation of Article I, section 8 (or any other self-executing constitutional provision).

Sovereign immunity does not apply for Ludwick as he was a complaining witness when he signed the December 2017 arrest warrant which contained knowing material misrepresentations and omissions. *Malley v. Briggs*, 475 U.S. 335, 343-45 (1986) is instructional in evaluating differences between claims of false arrest, and the constitutional unreasonable search and seizure claim, and in evaluating whether Ludwick and the State are immune from either. The primary difference between these two claims is the constitutional claim focuses on the invalid warrant that resulted in Jason's arrest, not the arrest itself. Absolute immunity does not shield a law enforcement officer who prepares and files a sworn affidavit to accompany a request for an arrest warrant. *Kalina v. Fletcher*, 522 U.S. 118, 130-31 (1997). In doing so, the officer is "perform[ing] the function of a complaining witness," not of an advocate. *Id.* p.131. Law enforcement officers are not entitled to absolute immunity when they act as complaining witnesses. *Malley*, 475 U.S. p.343. Complaining witnesses are "distinguishable from witnesses p.trial, ordinary witnesses, who are absolutely immune from any claim arising from their testimony." *Minor v. State*, 819 N.W.2d 383, 395 (Iowa 2012).

Because the State and Ludwick are not absolutely immune when acting as complaining witnesses—in this instance, filing a facially invalid

misleading arrest warrant which subsequently led to a false arrest—it is axiomatic they are not absolutely immune from a claim under Article I, section 8 of the Iowa Constitution. While certain facts overlap between the two claims, overlap of certain facts that could arise in a claim excepted by the ITCA is insufficient to establish the nexus of functional equivalency. *Trobaugh v. Sondag*, 668 N.W.2d 577, 584 (Iowa 2003). Although Jason's claim for a violation of Article I, section 8 of the Iowa Constitution contains overlapping facts with a potential claim for false arrest, the constitutional claim is far broader and alleges different conduct, therefore it does not follow the constitutional claim is also excepted.

ii. There is no adequate remedy at law for Carter's Unreasonable Search and Seizure claim.

The Iowa Supreme Court "recognize[s] a tort claim under the Iowa Constitution when the legislature has not provided an adequate remedy." *Godfrey*, 898 N.W.2d p.880, Cady, C.J., concurring). Importantly, an "appropriate case" for the recognition of a constitutional tort through a self-executing provision involves "infringement of physical security, privacy, bodily integrity . . ." *Id. p.*881 (Cady, C.J., concurring). This is the claim brought by Jason. Article I, section 8 takes effect without enabling legislation. It is complete. Because it is self-executing, this court is "in a position to award traditional damages." *Id.* p.868.

Though constitutional claims have aspects of excepted claims, Jason's claim is different and broader than excepted claims, as the unreasonable search and seizure claim encompasses Ludwick's lies to the court, omissions, and misrepresentations in the arrest warrant application. (Appx. p.7; 8; 11; 14; 19; 20; 21; 22-23; 24; 28; 29; 32; 37; 38; 39; 42; 45; 57.) These complained-of actions exceed the excepted chapter 669 claims and are recognized to support a constitutional tort claim under Article I, section 8.

Again, even though Jason's constitutional claim has limited overlap with chapter 669 excepted claims, this claim is different and broader than excepted claims. Jason would have no remedy if not allowed to proceed with his claim based on the false warrant affidavit. Taking all facts pled as true, the district court erred in dismissing this constitutional claim based on sovereign immunity.

e. Qualified Immunity Cannot be Granted at this Stage, as the Burden of Proof to Establish Such Immunity is on Ludwick

i. The State is required to plead and prove the affirmative defense of qualified immunity for constitutional claims

Overall "qualified immunity is available as an affirmative defense to constitutional tort claims. It therefore cannot be submitted through a motion to dismiss unless the facts alleged in the petition give rise to the affirmative

defense." *Lennette v. State*, 924 N.W.2d 878, 2018 WL 6120049, p.*3 (Iowa Ct. App. 2018). As

> qualified immunity in constitutional tort cases is an affirmative defense[,] dismissing a cause of action at the motion-to-dismiss stage on the basis of an affirmative defense is improper. . . . Typically, "[a] motion to dismiss ... is not a proper vehicle for the submission of affirmative defenses."

Id. (quoting *Harrison v. Allied Mut. Cas. Co.*, 113 N.W.2d 701, 702 (Iowa 1962)).

> Because the question is one of immunity, the burden of proof should be on the defendant. Accordingly, to be entitled to qualified immunity a defendant must plead and prove as an affirmative defense that she or he exercised all due care to comply with the law.

Baldwin v. City of Estherville, 915 N.W.2d 259, 280 (Iowa 2018) (citation omitted); *see also Breese v. City of Burlington*, 945 N.W.2d 12, 22 (Iowa 2020).

The State filed a pre-answer motion to dismiss in response to Jason's Petition. (Appx. p.70-71.) Jason's petition did not address qualified immunity, and no facts in the record are sufficient for pleading or proof necessary to sustain any affirmative defense relating to qualified immunity. Jason argued to the court in the April 2021 hearing that these affirmative defenses must be plead and proven by the defense, and it was incorrect to address these

arguments at the motion to dismiss stage. (Apr. 2021 Hearing Trans.) The district court erred by dismissing on the grounds of qualified immunity.

ii. Ludwick intentionally trampled Carter's constitutional rights, eliminating his ability to rely on all due care or any other qualified immunity

Assuming *arguendo*, qualified immunity was before the district court, the pled facts obliterate any ability to rely on qualified immunity at this stage.

> [T]he all-due-care immunity set forth in *Baldwin* is a constitutional immunity. It bars suit and damages only for constitutional claims and only when the government official proves "that he or she exercised all due care to conform with the requirements of the law." *Id.* p.260–61. The *Baldwin* immunity is in addition to any other common law immunities or defenses available and not a comprehensive substitute immunity.

Venckus v. City of Iowa City, 930 N.W.2d 792, 802 (Iowa 2019) (citations and quotations omitted).

1. Ludwick's lies and omissions in the arrest warrant application are not entitled to qualified immunity

Though not controlling and applying a lower standard than Iowa provides, federal courts addressed the metes and bounds of qualified immunities under the federal constitution. The Fourth Amendment protects the "right of citizens not to be arrested without probable cause." *Kuehl v. Burtis*, 173 F.3d 646, 649 (8th Cir. 1999). Officers are only entitled to

qualified immunity on a false arrest claim if "arrest was supported by at least arguable probable cause." *Johnson v. McCarver*, 942 F.3d 405, 409 (8th Cir. 2019); *see also Kuehl*, 173 F.3d p.649-50. "Arguable probable cause exists if it turns out that an officer lacked adequate grounds for an arrest, but made an ***objectively reasonable mistake*** about the existence of probable cause." *Johnson*, 942 F.3d p.409 (emphasis added). "Probable cause exists when the totality of the circumstances demonstrates that a prudent person would believe that the arrestee has committed or was committing a crime." *Kuehl*, 173 F.3d p.650.

> *An officer contemplating an arrest is not free to disregard plainly exculpatory evidence*, even if substantial inculpatory evidence (standing by itself) suggests that probable cause exists . . .
>
> [R]elatedly, law enforcement officers have a *duty to conduct a reasonably thorough investigation prior to arresting a suspect*, at least in the absence of exigent circumstances . . . .

Kuehl, 173 F.3d p.650-51 (emphasis added); *see also BeVier v. Hucal*, 806 F.2d 123, 128 (7th Cir. 1986) (a police officer "may not close her or his eyes to facts that would help clarify the circumstances of an arrest"); *Sevigny v. Dicksey*, 846 F.2d 953, 956-68 (4th Cir. 1988) (no probable cause where officer unreasonably failed to interview witnesses at the scene who would have corroborated plaintiff's version).

There is no exigency. The homicide occurred in June 2015. Jason was arrested in December 2017. Ludwick had two and a half years to conduct a reasonably thorough investigation. Even if it is argued probable cause existed at some point, that is not the question before this Court. The question is whether there was probable cause on December 17, 2017.

Arrest Warrant Signed December 16, 2017

The arrest warrant issued on December 16, 2017 (the day after the civil trial concluded) was signed by the judge who presided over the civil trial (in which she ruled to allow collaboration between the State and the civil plaintiffs). (Appx. p.10.) The assertions in the arrest warrant supporting the elements of the murder allegation included:

1. Jason Carter "gave multiple inconsistent statements regarding his involvement during the course of the investigation."

2. "[T]here was a staged burglary at the home of the victim at the time of the murder."

3. Jason Carter "testified under oath that he has never touched evidence at the crime scene and evidence later established that Jason Carter's latent prints were found on the evidence."

4. Jason Carter "had knowledge of the crime that no one other than a person present at the time of the crime could have known."

5. Jason Carter "withheld vital information from initial interviews with law enforcement."

These allegations are not supported by the evidence and are intentionally misleading or omit information. (Appx. p.10.)

First, so-called "inconsistent statements" have never been identified and are not identified in the Affidavit in support of the warrant. (Appx. p.11.) Therefore, as the issuing judge was only provided "subjective findings or conclusions" instead of the facts allegedly underlying those conclusions, these may not be used to support the finding of probable cause. *State v. Spier*, 173 N.W.2d 854, 859 (Iowa 1970).

Second, the "staged burglary" is a disputed and subjective theory that was undermined by many witnesses who told Ludwick the homicide was an interrupted burglary to which there were *confessions* and corroborating evidence. (known to Ludwick at the time he signed the warrant affidavit). (Appx. p.25; 26-27; 35; 36.) More evidence indicated this was an interrupted burglary than a staged burglary, but all evidence of an interrupted burglary is omitted from the Affidavit in support of the warrant.

Third, the assertion Jason "testified under oath that he has never touched evidence at the crime scene and evidence later established that [his] latent prints were found on the evidence" was not accompanied by disclosure the elicited the testimony in a calculated participation in the civil suit. (Appx.

p.9.) The State failed to disclose "the evidence" was a gun cabinet which was a fifteen-year old gift from Jason to Bill Carter, and failed to disclose the State knew the prints were behind assembled pieces (meaning inaccessible after the cabinet was assembled) and on the underside of a shelf – and that the state knew the prints were fifteen years old because toddler-size prints from Jason's adolescent son were also on the cabinet. The application omits the knowledge of an unidentified print on the cabinet. If the warrant affidavit contained indication the prints were likely fifteen years old and another unidentified print was on the gun safe, no reasonable person would think failure to remember assembling a fifteen year old gift is equivalent to lying about touching a gun cabinet on the date of the homicide.

Fourth, the assertion Jason "had knowledge of the crime that no one other than a person present at the time of the crime could have known" is a subjective conclusion and does not alone support probable cause. *Spier*, 173 N.W.2d p.859. Further, this assertion was controverted by evidence possessed by the State at the time. Recorded evidence (in the possession of the state at the time of the arrest) shows Bill Carter made the same observatory and speculative statements as Jason and made one of the alleged statements *instead* of Jason. By that logic, the State had a greater level of probable cause to charge Bill Carter as to charge Jason Carter. (Appx. p.18.)

Fifth, the assertion Jason "withheld vital information from initial interviews with law enforcement" is a subjective **unsupported** conclusion. *Spier*, 173 N.W.2d p.859. Once again, the warrant application does not specify what "vital information" Jason allegedly withheld; it is difficult to determine how this vague assertion could form the basis of probable cause. Presumably, this refers to Jason's decision not to volunteer information about an extramarital affair during his first interview with law enforcement. *No one asked if he was having an affair*. No evidence indicates a connection between the affair and the homicide (except Ludwick's disproved speculation *maybe* Jason had a sexually transmitted disease, *maybe* his wife learned about it at a medical appointment which *maybe* Shirley attended, and *maybe* Shirley was upset about it—a set of speculations upon which law enforcement based its theory of guilt until at least July 2018, when Jason's defense counsel learned of this theory and used medical records to *easily* dispel the theory as fantasy). (Appx. p.43-44.) at trial, the State never alleged connection between the extramarital affair and the homicide. It certainly was not "vital" information. The application was misleading at best and untruthful at worst.

Each listed allegation "supporting" probable cause was known to Ludwick and the State prior to the civil trial. Yet, Ludwick and the State withheld criminal charges until after the civil trial, two and a half years later.

Defendants tied criminal charges to the liability verdict, which they helped the civil plaintiffs achieve and used the civil trial for impermissible discovery in a criminal proceeding. The State never identified "new information" from the civil trial indicating Jason was responsible for the homicide. Again, this cannot support a probable cause finding.[4] *Spier*, 173 N.W.2d p.859.

Defendants are Not Protected by Qualified Immunity Because They Did Not Exercise Due Care Under the Law.

The allegations in the Petition illustrate a violation of a constitutional right. There was no probable cause to arrest Jason, and the arrest warrant was illegal. Ludwick disregarded significant exculpatory evidence and failed to conduct a reasonably thorough investigation before obtaining the warrant and arresting Jason. *Kuehl*, 173 F.3d p.650-51; *BeVier*, 806 F.2d p.128; *Sevigny*, 846 F.2d p.956-68.

The district court cited *Baldwin v. City of Estherville*, 915 N.W.2d 259, 280 (Iowa 2018) for the proposition officers and government employers are entitled to immunity from *Godfrey*-type claims if they "exercised all due care to comply with the law." The facts in the Petition show Ludwick did not

[4] Exculpatory evidence existed showing that not only did probable cause not exist to arrest Jason, but that it was impossible for him to have committed the crime. Jason's medical expert testified the timeline of the homicide made it impossible for Jason to have committed the homicide. The State offered zero evidence to refute the medical conclusion and did not consider the timeline when requesting the arrest warrant.

exercise "all due care to comply with the law." Ludwick provided incorrect information under oath on multiple occasions. (Appx. p.32; 34; 40; 41.) He refused to follow viable leads, including *confessions to the homicide*. (Appx. p.11; 14; 28; 29; 32; 37; 38; 39; 42; 45; 57.) He based his theory of guilt on weird speculation and did not make a basic inquiry to validate or invalidate that theory. He ignored the timeline and related evidence showing it was impossible for Jason to have committed the crime. (Appx. p.22-23; 24.) He chilled exculpatory witnesses by telling them Jason planned to pin the crime on them. (Appx. p.22-23; 24.) He manipulated Jason's family by knowingly falsely indicating Jason planted evidence at the crime scene. (Appx. p.7; 8; 19; 20; 21.) He gave the civil plaintiffs questions to ask Jason under oath, in violation of Jason's constitutional rights. (Appx. p.13; 49; 51; 56-57; 56-60; 67.) Ludwick's abuses of power were continuous, reckless, malicious, and willful. All this occurred prior to his affidavit requesting the arrest warrant. All this material information was omitted from that warrant application.

The qualified immunity standard does not protect "the plainly incompetent or those who knowingly violate the law." *Ulrich v. Pope County*, 715 F.3d 1054, 1059 (8th Cir. 2013). The Petition demonstrates Ludwick is the epitome of incompetent, and he knowingly violated the law. He is not entitled to qualified immunity.

2. Ludwick Ignored and Hid Material Evidence, Leads, and Admissions for over two years during the prior civil case, violating Jason's substantive due process rights and right to judicial access

Agent Ludwick's utterly failed criminal investigation and his participation in the civil proceedings with Bill Carter violated due process and interfered with Jason's right of judicial access. As the district court correctly noted, "a violation of substantive due process may arise [under the Iowa Constitution] from government action that 'shocks the conscience.'" *Atwood v. Vilsack*, 725 N.W.2d 641, 647 (Iowa 2006) (quoting *United States v. Salerno*, 481 U.S. 739, 746 (1987)). Because the conscience-shocking standard under the Iowa Constitution is identical to the conscience-shocking standard under the United States Constitution, Iowa courts look to federal cases when interpreting our due-process clause. *Id.*

The Due Process Clause of the Fourteenth Amendment, and thus the due process clause of the Iowa Constitution, "was intended to secure the individual from the arbitrary exercise of the powers of government." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). The substantive component of due process bars "certain government actions regardless of the fairness of the procedures used to implement them." *Id.* To succeed on a substantive due

process claim, a plaintiff alleging abusive action must prove "the defendants abused their official power in a manner that shocks the conscience, regardless of whether state-law remedies are available." *Zakrzewski v. Fox*, 87 F.3d 1011, 1014 (8th Cir. 1996).

The Petition filed sets forth Ludwick's actions of hiding evidence, purposefully failing to investigate leads and admissions, manipulating evidence and reports to hide exculpatory evidence, and directing those under his supervision to likewise ignore evidence and ignore leads. (Appx. p.7; 8; 11; 14; 19; 20; 21; 22-23; 24; 28; 29; 32; 37; 38; 39; 42; 45; 57.) These allegations set forth a patent due process violation and violation of Jason's right to judicial access. *See, e.g.*, *Bell v. City of Milwaukee*, 746 F.3d 1205 (7th Cir. 1984), and *Rossi v. City of Chicago*, 790 F.3d 729 (7th Cir. 2015) (providing where a litigant's day in court is effectively denied due to investigation cover up and other salacious and egregious actions of law enforcement, a due process violation occurs).

Jason's Petition sets forth sufficient allegations for a substantive due process claim, including a claim of denial of judicial access. The United States Supreme Court considered this issue in *County of Sacramento v. Lewis*, 523 U.S. 833 (1988), a case involving law enforcement liability for actions during

a high-speed chase, a situation which necessitates instant decision-making without time to reflect. The Court found, in that context:

> To recognize a substantive due process violation in these circumstances when only midlevel fault has been shown would be to forget that liability for deliberate indifference to inmate welfare rests upon the luxury enjoyed by prison officials of having time to make unhurried judgments, upon the chance for repeated reflection, largely uncomplicated by the pulls of competing obligations. *When such extended opportunities to do better are teamed with protracted failure even to care, indifference is truly shocking*.

Lewis, 523 U.S. p.853 (emphasis added). Ludwick had a *truly* extended opportunity to "do better." Almost four years passed between the homicide and the criminal trial. Yet, he "followed up" on important exculpatory leads in the middle of Jason's criminal trial, and after the State had rested its case.

In *Neal v. St. Louis County Board of Police Commissioners*, 217 F.3d 955, 958 (8th Cir. 2000), the Eighth Circuit stated, based on *Lewis*, in situations where State actors have the opportunity to deliberate various alternatives prior to selecting a course of conduct, such action violates due process if it is done recklessly. *Id.* The Eighth Circuit also applied this standard in *Wilson v. Lawrence County*, 260 F.3d 946 (8th Cir. 2001):

> Law enforcement officers, like prosecutors, have a responsibility to criminal defendants to conduct their investigations and prosecutions fairly as illustrated by the *Brady* line of cases requiring the state to disclose exculpatory evidence to the defense. Although charged with investigating and prosecuting the accused with "earnestness and vigor," ***officers must be***

> ***faithful to the overriding interest that "justice shall be done."*** *United States v. Agurs*, 427 U.S. 97, 110-11 (1976), *overruled on other grounds*, *United States v. Bagley*, 473 U.S. 667 (1985); *see also [Arizona v.] Youngblood*, 488 U.S. [51], 54-55 [(1988)] (evaluating whether *Brady* applied where officers, rather than prosecutors, lost evidence). They are "'the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.'" *Agurs*, 427 U.S. p.11 (quoting *Berger v. United States*, 295 U.S. 78 (1935)). ***There is no countervailing equally important governmental interest that would excuse [law enforcement] from fulfilling their responsibility to investigate these leads when faced with an involuntary confession and no reliable corroborating evidence.*** Therefore, the proper standard to judge whether the officers' conduct violates due process is recklessness.
>
> If [the plaintiff's] evidence proves credible at trial, ***a failure to investigate those other leads could easily be described as reckless or intentional***.

Wilson, 260 F.3d p.957 (emphasis added). The Eighth Circuit affirmed the district court's denial of qualified immunity because of law enforcement's failure to investigate leads. *Id.*

In *Wilson*, the Eighth Circuit addressed the timeline of investigation, emphasizing in the context of a high-speed chase, officers are forced to make quick decisions in exigent circumstances. In *Wilson*, "officers conducting the post-arrest investigation certainly had the luxury of unhurried judgments and repeated reflections, which make a reckless[ness] standard appropriate." *Id.* The Eighth Circuit pointed out the preliminary hearing in Wilson's case did not occur until five and a half months after law enforcement secured his

involuntary confessions. *Id.* p.957. Ludwick had ***two and a half years*** before Jason's preliminary hearing, and almost ***four years*** before trial.

In *Wilson*, law enforcement had an allegedly coerced confession from the defendant. There was no confession and there was also no corroborating evidence showing Jason was responsible for the homicide (and plenty of evidence showing it was impossible). Law enforcement's theories of guilt were based on speculation and fantasy (for example, the sexually transmitted disease theory addressed earlier in this brief). (Appx. p.43.) Medical evidence combined with video evidence proved impossibility of Jason committing the homicide. (Appx. p.10; 23.) Myriad leads were never investigated because they did not fit Ludwick's baseless, presupposed, and unreasonable theory of the crime, (Appx. p.11; 14; 28; 29; 32; 37; 38; 39; 42; 45; 57), Ludwick had the county sheriff removed from the investigation because "he did not see or believe" Jason was responsible for the homicide. (Appx. p.45.)

In *Wilson*, the leads alleged to be uninvestigated were far less direct than in this matter. In *Wilson*, the plaintiff "point[ed] to information concerning an escaped felon with a *modus operandi* matching this homicide and an eyewitness who saw someone outside the house shortly before the fire . . . as the leads the officers chose not to pursue." *Wilson,* 260 F.3d p.955. That was enough for the Eighth Circuit to apply a recklessness standard. Jason's

complaint, by comparison, alleges non-exhaustively: people heard others confess to the crimes, (Appx. p.22; 24; 25-26; 26-27; 28; 29; 30; 31; 32; 34; 35; 37; 38; 45), but law enforcement failed to investigate alibis or waited for years to investigate, (Appx. p.11; 30), (and provided false information about those alibi witnesses' statements under oath in deposition, (Appx. p.25; 34)), and Ludwick intimidated witnesses who possessed exculpatory information by stating Jason would try to prove those witnesses were responsible for the homicide when they came forward with the exculpatory information, (Appx. p.22-23; 24). Just those few allegations demonstrate Jason's complaints far exceed the reckless standard established by the Eighth Circuit.

The district court in *Wilson* held, and the Eighth Circuit affirmed, "a reasonable factfinder could determine that [law enforcement] recklessly or intentionally chose to force Wilson to confess ***instead of attempting to solve the homicide through reliable but time consuming investigatory techniques designed to confirm their suspicions***." *Wilson,* 260 F.3d p.955 (emphasis added).

The same is abundantly true here; and while Jason's claims are based on the Iowa Constitution and not the federal constitution, the federal constitution sets the floor and not the ceiling for the protection of constitutional rights. *See, e.g.*, *State v. Brown*, 930 N.W.2d 840, 857 (Iowa

2019) (McDonald, J., concurring); *State v. Pettijohn*, 899 N.W.2d 1, 26 (Iowa 2017); *State v. Sweet*, 879 N.W.2d 811, 832 (Iowa 2016); *Nguyen v. State*, 878 N.W.2d 744, 755 (Iowa 2016); *State v. Baldon*, 829 N.W.2d 785, 791 & n.1 (Iowa 2013).

Ludwick had legal and constitutional avenues available to investigate the homicide and to attempt to gather evidence against Jason. However, because those legal and constitutional avenues were not adducing evidence showing Jason was responsible for the homicide, Defendants turned the civil suit into a proxy for criminal prosecution by lying to Bill Carter and to Jason's siblings and by then aiding the civil plaintiffs by providing piecemeal, cherry-picked, seemingly inculpatory information; by repeatedly meeting with the civil plaintiffs privately; by providing the civil plaintiffs with questions to ask Jason in depositions; and by intentionally waiting for the civil suit to conclude before charging Jason with murder. (Appx. p.49; 50; 51; 55-56; 56-57.)

Ludwick goaded individuals and misrepresented information to push the civil suit against Jason, while virtually halting investigation of other suspects during the pendency of that civil suit. (Appx. p.48.) Rather than investigate myriad exculpatory leads, Ludwick used unbalanced civil proceedings to build his case, including inciting public anger against Jason, to misrepresent Jason's guilt to family and community, to threaten witnesses

with information pointing to other suspects, and to direct those under his supervision to ignore evidence and other leads, and to author incorrect and misleading reports. These facts alleged in the Petition rise beyond the qualified immunity standard. Again, the Petition allegations illustrate a violation of a constitutional right. Ludwick disregarded significant exculpatory evidence and failed to conduct a reasonably thorough investigation before obtaining the arrest warrant. *Kuehl*, 173 F.3d p.650-51; *BeVier*, 806 F.2d p.128; *Sevigny*, 846 F.2d p.956-68. Ludwick lied or provided incorrect information under oath on multiple occasions. (Appx. p.32; 34; 40; 41.) He refused to follow viable leads, including *confessions to the homicide*. (Appx. p.11; 14; 28; 29; 32; 37; 38; 39; 42; 45; 57.) He based his theory of guilt on speculation and did not make even the basic request for medical records which would have shown that theory to be wrong. He ignored the timeline showing it was impossible for Jason to have committed the crime. (Appx. p.22-23; 24.) He chilled exculpatory witnesses Jason had never heard of by telling them Jason planned to pin the crime on them in trial. (Appx. p.22-23; 24.) He manipulated Jason's family and turned them against him by falsely indicating Jason planted evidence at the crime scene. (Appx. p.7; 8; 19; 20; 21.) He gave the civil plaintiffs questions to ask Jason under oath, in violation of Jason's constitutional rights. (Appx. p.13; 49; 51; 56-57; 59-60; 67.) All

this occurred before or during the prior civil case against Jason and prevented Jason from having his day in court. Ludwick's tramping of Jason's rights was continuous, reckless, malicious, and willful.

The qualified immunity standard does not protect "the plainly incompetent or those who knowingly violate the law." *Ulrich v. Pope County*, 715 F.3d 1054, 1059 (8th Cir. 2013). The Petition demonstrates Ludwick is the epitome of incompetent, and he knowingly violated the law. He is not entitled to qualified immunity.

f. Judicial Process Immunity does not Protect Ludwick's Actions

The district court concluded judicial process immunity protects Ludwick's actions, at least to the extent he participated in the underlying civil suit as a witness and in responding to subpoenas. "[I]n determining whether absolute immunity applies, the focus is on the nature of the function performed, not on the identity or title of the particular actor. *Muzingo v. St. Luke's Hosp.*, 518 N.W.2d 776, 777 (Iowa 1994).

> [Iowa courts] grant absolute immunity for only. . . those governmental functions that were historically viewed as so important and vulnerable to interference by means of litigation that some form of absolute immunity from civil liability was needed to ensure that they are performed with independence and without fear of consequences.

> The functional approach demonstrates the immunity ... is not for the protection of the official personally, but for the benefit of the public. The immunity benefits the public by protecting government officials involved in the judicial process from the harassment and intimidation associated with litigation.

Venckus v. City of Iowa City, 930 N.W.2d 792, 801 (Iowa 2019) (citations, quotations, and brackets omitted).

i. Ludwick's conduct far exceeded "investigation"

Ludwick's and the State's actions are outside the realm of judicial process immunity. Ludwick's choice to advocate for and involve himself in private litigation and his coercive actions to support a position in that litigation are beyond the pale. His actions of working with the civil plaintiff Bill Carter and directing law enforcement under his supervision to do the same thing, morphs Ludwick into an de facto advocate for Bill Carter. Ludwick's actions of lying, hiding evidence, mislabeling reports, threatening witnesses, stopping investigation into other suspects, and directing law enforcement officers to do the same solidifies Ludwick's de facto role as co-conspirator with the prior civil plaintiffs.

It borders on the absurd to label these actions as among "those governmental functions that were historically viewed as so important and vulnerable to interference by means of litigation that some form of absolute

immunity from civil liability was needed to ensure that they are performed with independence and without fear of consequences." *Venckus*, 930 N.W.2d p.801 (quotation omitted). Ludwick's myriad actions were those of a plaintiff in the civil suit, and not those of a mere "police officer . . . testifying as an ordinary witness." *Id. p.*806. There is no benefit to the public in condoning Ludwick's actions; instead, harm would occur in immunizing blatant unconstitutional behavior. Judicial process immunity does not apply to protect myriad egregious invasive actions taken by the State and by Ludwick in the underlying civil suit. From encouraging filing a civil suit, to orchestrating discovery, to violating the sequestration order, Ludwick may not rely on judicial process immunity.

II. THE DISTRICT COURT INAPPROPRIATELY WEIGHED MERITS OF CLAIMS AND DEFENSES AT THE MOTION TO DISMISS - CHAPTER 669 IMMUNITIES DO NOT APPLY TO IOWA CONSTITUTIONAL CLAIMS

a. Preservation of Error

In his resistance to dismissal, and during hearing on the motion, Jason argued that qualified immunity was a defense that must be pled and proven by the defense, and that all facts in the petition are to be assumed true. (Appx. p.82-83; Apr. 2021 Trans.) The District Court dismissed Jason's claims on

qualified immunity grounds, and after weighing the merits of the facts alleged in the petition. (Appx. p.93-126.) Error is preserved on this issue.

b. Standard of Review

As discussed above, Iowa appellate courts review a district court ruling granting a motion to dismiss for correction of errors at law. *Ackerman v. State*, 913 N.W.2d 610, 614 (Iowa 2018); *Madden v. City of Iowa City*, 848 N.W.2d 40, 44 (Iowa 2014).

"A motion to dismiss should not be liberally granted." *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001). Under Iowa's established standard for a motion to dismiss under rule 1.421(1)(*f*), the court accepts facts alleged in the petition as true. *McGill v. Fish*, 790 N.W.2d 113, 116 (Iowa 2010). Courts review the "petition in its most favorable light, resolving all doubts and ambiguities in [the plaintiff's] favor." *Schriner v. Scoville*, 410 N.W.2d 679, 680 (Iowa 1987). The Iowa Supreme Court describes the standard:

> Nearly every case will survive a motion to dismiss under notice pleading. Our rules of civil procedure do not require technical forms of pleadings . . . .
>
> A petition need not allege ultimate facts that support each element of the cause of action; however, a petition must contain factual allegations that give the defendant fair notice of the claim asserted so the defendant can adequately respond to the petition.

U.S. Bank v. Barbour, 770 N.W.2d 350, 353 (Iowa 2009) (citations, quotations, and brackets omitted).

The sole issue when considering a motion to dismiss is the "petitioner's right of access to the district court, not the merits of his allegations." *Rieff*, 630 N.W.2d p.284 (citations and quotation omitted). "Very little is required in a petition to survive a motion to dismiss." *Id. p.*292. "Generally, a motion to dismiss should not be granted. [The Iowa Supreme Court] ha[s] stated that nearly every case will survive a motion to dismiss under notice pleading." *Weizberg v. City of Des Moines*, 923 N.W.2d 200, 217 (Iowa 2018) (quotations omitted).

Appellate courts do not consider facts contained in the motion to dismiss. *See McGill v. Fish*, 790 N.W.2d 113, 116 (Iowa 2010).

Lastly, "[t]o the extent that [appellate courts] review constitutional claims, our review is de novo." *Id.* p.116–17.

c. Immunities Should be Decided by Summary Judgment or Trial because they are Defenses, not Elements

"[Q]ualified immunity is available as an affirmative defense to constitutional tort claims. It therefore cannot be submitted through a motion to dismiss . . . ." *Lennette*, 2018 WL 6120049, p.*3 . Typically, "[a] motion to dismiss ... is not a proper vehicle for the submission of affirmative defenses." *Id.* (quoting *Harrison v. Allied Mut. Cas. Co.*, 113 N.W.2d 701, 702 (Iowa 1962)).

Again, "to be entitled to qualified immunity a defendant must plead and prove as an affirmative defense that she or he exercised all due care to comply with the law." *Baldwin*, 915 N.W.2d p.280 (Iowa 2018) (citation omitted); *see also Breese*, 945 N.W.2d p.22.

The State filed a pre-answer motion to dismiss in response to Jason's Petition. (Appx. p.70-71.) Jason's petition did not address qualified immunity. Jason argued to the court that these affirmative defenses must be plead and proven by the defense, and it was incorrect to address these arguments at the motion to dismiss stage. (Apr. 2021 Hearing Trans.)

d. The District Court Misapplied the Test for Dismissal by Requiring Carter to *Prove*, rather than *Plead*, His Case p.Motion to Dismiss Stage.

The district court incorrectly weighed the merits of Jason's claim, reviewing the facts in the petition and those asserted by the State, and concluding probable cause existed. (Appx. p.93-126.) This failed to accept the facts alleged in the petition as true. *McGill*, 790 N.W.2d p.116, and further failed to view the "petition in its most favorable light, resolving all doubts and ambiguities in [the plaintiff's] favor." *Schriner*, 410 N.W.2d p.680.

As stated above, Jason alleged specific facts showing probable cause did not exist to issue the arrest warrant. As addressed above, the arrest warrant application fails with regard to assertions about:

1. "multiple inconsistent statements" which are neither inconsistent nor involve the course of the investigation.

2. "a staged burglary" which evidence overwhelming shows was an interrupted burglary.

3. testimony that Jason "never touched evidence at the crime scene and evidence later established that Jason Carter's latent prints were found on the evidence" which was never clarified to be 15 year old fingerprints clearly from assembly.

4. "knowledge of the crime that no one other than a person present at the time of the crime could have known." which was a statement actually attributed to Bill Carter

5. "withheld vital information from initial interviews with law enforcement." which was not vital and arguably not withheld.

All of which was known to Ludwick at the time of the Warrant application.

The allegations in the Petition illustrate a violation of a constitutional right and specifically show there was no probable cause to arrest Jason and demonstrate the arrest warrant was illegal. Ludwick disregarded significant exculpatory evidence and failed to conduct a reasonably thorough investigation before obtaining the arrest warrant. The facts in the Petition show Ludwick did not exercise "all due care to comply with the law."

Ludwick lied or provided incorrect information under oath on multiple occasions. (Appx. p.32; 34; 40; 41.) He refused to follow viable leads, including *confessions to the homicide*. (Appx. p.11; 14; 28; 29; 32; 37; 38; 39; 42; 45; 57.) He based his theory of guilt on speculation and did not make any attempt to investigate his wrong theory. He ignored the timeline showing it was impossible for Jason to have committed the crime. (Appx. p.22-23; 24.) He chilled exculpatory witnesses Jason had never heard of by telling them Jason planned to pin the crime on them. (Appx. p.22-23; 24.) He manipulated Jason's family by knowingly falsely indicating Jason planted evidence. (Appx. p.3, 4, 15-17.) He gave the civil plaintiffs questions to ask Jason under oath, violating Jason's constitutional rights. (Appx. p.13; 49; 51; 56-57; 59-60; 67.) Ludwick's abuses of power were reckless, malicious, and willful. All this material information was omitted from that warrant application.

The district court failed to view the "petition in its most favorable light, resolving all doubts and ambiguities in [the plaintiff's] favor." *Schriner*, 410 N.W.2d p.680. The district court did not recognize "[g]enerally, a motion to dismiss should not be granted. [And the Iowa Supreme Court] ha[s] stated nearly every case will survive a motion to dismiss under notice pleading." *Weizberg*, 923 N.W.2d p.217 (quotations omitted).

Taking the alleged facts as true, the district court erred in dismissing Jason's claims.

III. CONCLUSION

Agent Ludwick actions are far from a reasonable investigation. No normal investigation ignores video evidence of the defendant's innocence, involves confirmation bias to this extreme, perpetuates family manipulation through lies and campaigning, violates a sequestration order, commits perjury, hides interviews, refuses to analyze a fingerprint, relies on an inaccessible fingerprint, waits over a year-and-a-half to follow leads, and works with a civil plaintiff to conduct unconstitutional discovery. This is neither normal nor acceptable nor protected.

In *Marbury v. Madison*, Chief Justice John Marshall: ". . . where there is a legal right, there is also a legal remedy . . . whenever that right is invaded." This maxim traces back to England; even Rome. When an individual's constitutional rights are invaded, courts must ensure a remedy. Our State's Constitution is in place to protect individuals from governmental overreach, whether that is by the general assembly or a government agent.

Likewise, this Court recognizes the importance of individual Iowa constitutional rights, and the importance a remedy, especially where no remedy would otherwise exist. Whether looking at recent state jurisprudence,

overarching jurisprudence from prior centuries, or even past millennia, every right must be protected by a remedy.

Carter sufficiently pled facts. No immunities apply. Carter requests this court reverse and remand to affirm Iowans' rights to ask courts for redress from constitutional violations.

Jason Carter requests oral argument.

/s/ Christine E. Branstad
Christine E. Branstad AT0001125
Nathan A. Olson AT0011403
BRANSTAD & OLSON
2501 Grand Ave. Suite A
Des Moines, IA 50312
Telephone: (515) 224-9595
Branstad@BranstadLaw.com
Olson@BranstadLaw.com

/s/ Alison F. Kanne
Alison F. Kanne AT0013262
WANDRO & ASSOCIATES, P.C.
2501 Grand Ave. Suite B
Des Moines, IA 50312
Telephone: (515) 281-1475
Facsimile: (515) 281-1474
akanne@2501grand.com

/s/ Glen S. Downey
Glen S. Downey AT0012428
LAW OFFICES OF GLEN S. DOWNEY
5214 Ingersoll Ave.
Des Moines, IA 50312
Telephone: (515) 865-7110
Facsimile: (515) 259-7599
Email: glen@downey-law.net

CERTIFICATE OF FILING

The undersigned certifies on May 2, 2022, I filed this Plaintiff/Appellant's Final Brief via the Iowa Judicial Branch EDMS system.

/s/ Nathan A. Olson
Nathan A. Olson AT0011403

CERTIFICATE OF SERVICE

The undersigned certifies on May 2, 2022, I served this Plaintiff/Appellant's Final Brief via the Iowa Judicial Branch EDMS system to the attorneys of record.

/s/ Nathan A. Olson
Nathan A. Olson AT0011403

CERTIFICATE OF COMPLIANCE

The undersigned certifies:

1. This final brief complies with the type-volume limitation of Iowa R. App. 6.903(1)(g)(1) because this proof brief contains 13,905 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.9903 (1)(g)(1).
2. This final brief 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 this brief has been prepared in a proportionally spaced typeface using Microsoft Word - Times New Roman 14 pt.

Dated: May 2, 2022

/s/ Nathan A. Olson
Nathan A. Olson AT0011403