

STATE OF INDIANA)
) SS:
ERIE COUNTY)

STATE OF INDIANA)
)
vs.)
)
MICHAEL JORDAN)

IN THE ERIE SUPERIOR COURT
CAUSE NO. 101D05- 1706- CM-002603

**MOTION OF DEFENDANT FOR REASONABLE
INTERNET ACCESS TO USE OF *DEFENSEMAP.COM***

Comes now defendant, by counsel, and moves for the Court’s assistance in affording him reasonable Internet access for approximately 2-4 hours to allow creation of a Defense Map via DefenseMap.com.

The necessity, safety, feasibility, and constitutional requirement of this relief are shown by the following Memorandum.

WHEREFORE, defendant moves for a Court order affording him reasonable Internet access for approximately 2-4 hours to allow creation of a Defense Map via DefenseMap.com.

/s/ R.W. Fairchild
R.W. Fairchild, Atty. No. 93-948883
400 East Adams St., Suite #1400
Erie, IN 46601
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DEFENDANT'S MEMORANDUM

In support of the instant motion, defendant shows as follows.

1. Defendant was arrested approximately ten days ago and charged with three serious drug trafficking offenses. He is being held on a cash-only bond of \$175,000, and the prosecution has indicated it will oppose a modification of that bond.

2. Counsel was appointed to represent defendant approximately seven days ago and has had two preliminary meetings with him. Based on those meetings, counsel's representation of hundreds of clients in similar cases, and the information shared in this Memorandum, counsel firmly believes that his competent representation in this case requires that defendant have the opportunity to create a Defense Map using the resource DefenseMap.com.

3. Counsel has thus far been unable to convince the Erie County Sheriff and the Erie County Jail Warden to permit defendant the computer access necessary for defendant's use of DefenseMap.com, although both have agreed they would do so if ordered by this Court.

4. The computer access necessary for this work would involve merely defendant's access for 2-4 hours to a computer whose Internet reach was limited by the Jail's IT staff to this single website. This accommodation would be a fraction of the technology assistance routinely afforded the prosecution and police in their interviews of incarcerated witnesses. The Jail's IT staff has not disputed that it is fully capable of supplying this accommodation, and defendant is also willing to substitute use of a Defense Map by his transportation to a site (including either counsel's office, the Erie County Special Crimes Investigative Center where police and prosecution interviews are conducted with full benefit of access to computers and the Internet, or another suitable location agreeable to the prosecution and state).

5. Counsel's investigation thus far shows the need of a Defense Map to develop

numerous issues bearing on issues of guilt or innocence, defendant's suitability for pretrial release, and mitigation.

6. In the last 12 months counsel has been using [DefenseMap.com](https://www.defensemap.com) in many cases. It is counsel's experience that these Defense Maps are multiplying severalfold the quantity and quality of vital information clients are able to share.

7. Counsel's experience, in fact, is that there is no substitute for the assistance that a Defense Map can be in a case such as defendant's. In fact, counsel's experience is exactly that described in [A Comprehensive Introduction to DefenseMap.com](#) found on the [Posts](#) link of the [DefenseMap.com](https://www.defensemap.com) site. Among other things, counsel has referred some clients to this website after conducting traditional thorough interviews of them and found that the resulting Defense Maps disclosed many pieces of important information that clients had failed to share in even very careful face-to-face interviews. Counsel's experience is entirely consistent with the description of the "Six Hidden Barriers" in traditional client interviews cited in [A Comprehensive Introduction to DefenseMap.com](#).

- a. The inability to ask the many hundreds of questions available on [DefenseMap.com](https://www.defensemap.com) (over 850 potential questions that are ingeniously winnowed down through a system of skip logic).
- b. The practical inability of expecting answers in face-to-face interviews to some of the most deeply personal (and essential) questions in this resource.
- c. The ways clients' often highly traumatic and otherwise atypical life experiences are effectively beyond the reach of our interviews.
- d. The several ways that some clients' mental health and other personal issues limit or distort their face-to-face disclosures.

e. The ways that face-to-face interviews inhibit disclosures but online work radically expands it.

f. The many ways that interviews in jail circumstances seriously compromise privacy, confidentiality, and interview completeness.

g. The inevitable diversion of both counsel and client to other tasks before even an appreciable fraction of the 850+ potential questions can be asked.

8. In addition to collecting vast amounts of easily missed information, these Defense Maps are also proving vital in a wide variety of important aspects of effective representation, including (a) automatically detecting and highlighting easily missed issues and defenses, (b) giving more complete pictures of incarcerated persons' suitability for release, (c) identifying through an "Index of Supporters" the people who can assist clients both in their cases and in their lives, (d) ascertaining what expert assistance to seek, (e) assisting clients in reviewing their lives and making powerful decisions about changes they could choose to undertake, and (f) giving clients significant help in developing optimal relationships with their attorneys.

9. As explained on page 8 of [A Comprehensive Introduction to DefenseMap.com](#), this website uses at least five ingenious mechanisms to accomplish all these incidents of 21st-century defense representation to match 21st-century prosecutions: (a) case typing, (b) skip logic, (c) follow-on questioning, (d) issue screening, and (5) amendment indexing.

10. Fuller appreciation of the unique power of Defense Maps can be assisted by examining some of the Maps on the [Sample Maps](#) link of [DefenseMap.com](#).

11. But defendant's access to [DefenseMap.com](#) is not just sound policy. As shown in [The Constitutional Case for Incarcerated Persons' Access to DefenseMap.com](#), it is also required by the Due Process Clause. Of dispositive significance to this issue is that in

this jurisdiction (and probably in all American jurisdictions), the prosecution and police are always afforded generous technology assistance in all their interviews of incarcerated witnesses—including complete access to computer and Internet assistance (and very often even videotaping technology as well). Their interviews do not occur in technology-starved, confidentiality-compromised, and often virus-infested jailhouse visiting rooms, but instead in technology-rich, private, climate-controlled interview locations to which prosecution witnesses are routinely delivered for their interviewers' maximum convenience and effectiveness.

12. In *Wardius v. Oregon*, 412 U.S. 470, 93 S.Ct. 2208, 37 L.Ed.2d 82 (1973) the United States Supreme Court ruled unanimously that the defense must enjoy a “balance of forces” in discovery with the prosecution, even noting, “Indeed, the State's inherent information-gathering advantages suggest that, if there is to be any imbalance in discovery rights, it should work in the defendant's favor,” *Id.*, 412 U.S. at 475 fn. 9.

13. Cases following the *Wardius* requirement of “at least equal” discovery ruling include, among others, *State v. Norris*, 236 P.3d 225, 157 Wash. App. 50 (2010) (requiring precisely equal access to evidence); *United States v. Shrake*, 515 F.3d 743 (7th Cir. 2008) (requirement of defense access on equal terms); *State v. Warren*, 746 P.2d 711, 304 Or. 428 (Or. 1988) (sodomy and sexual abuse convictions reversed for failure to the defense access to, or court *in camera* inspection of, the files of state's Children's Services Division—and making explicit that police and prosecution are treated as a single joint entity in these *Wardius* issues); *Hill v. Superior Court*, 518 P.3d 1353, 10 Cal.3d 812, 112 Cal. Rptr. 257 (1974) (despite claims of high cost and defense alternatives, prosecution obligated under *Wardius* to use its statutory access to criminal records to comply with a defense request for the rap sheets of the prosecution witnesses); and *State v. Boot*, 697 P.2d 1034, 40 Wash. App. 215 (1985) (in the proper

circumstances, a defendant has the right under *Wardius* and other authorities to demand an identification lineup).

14. Defendant's constitutional right to the Internet access necessary for creation of a Defense Map is also required by *Pennsylvania v. Ritchie*, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987). "Our cases establish, at a minimum, that criminal defendants have the right to the government's assistance in compelling the attendance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt." 480 U.S. at 56. Instructive cases under *Pennsylvania v. Ritchie* include, among many others, *Davenport v. State*, 711 S.E.2d 699, 289 Ga. 399 (2011) (conviction reversed for the trial court's failure to sufficiently assist a defendant in procuring the testimony of an out-of-state witness); *Wilson v. State*, 693 A.2d 344, 345 Md. 437 (1997) (reversal by the Maryland Supreme Court of a heroin possession conviction for the failure of the trial court to assist the defense in enforcement of a subpoena for a witness's attendance); *Government of Virgin Islands v. Mills*, 956 F.2d 443 (3d Cir. 1992) (conviction reversed under *Pennsylvania v. Ritchie* for failure to advise the defense that a temporarily recalcitrant witness had changed his mind and was willing to testify); *United States v. Collins*, 551 F.3d 914, 927 (9th Cir. 2009) (the prosecution must assist the defense by accepting service of process for confidential informants' testimony); and *Void v. State*, 601 A.2d 124, 325 Md. 386 (1992) (convictions reversed for failure to assist the defense in procuring the attendance and testimony of witnesses).

15. Defense counsel knows from experience that the issues he is called on to acquaint himself with in a case such as defendant's are likely more numerous and more complicated than the issues the prosecution must address. Hundreds of possible issues can bear on a defendant's life, relationship to a charge, guilt or innocence, and mitigation. And all these complexities are

played out against the backdrop of the prosecution’s overwhelming advantages in criminal cases that prompted this caution from the opinion in *Wardius*: “Indeed, the State's inherent information-gathering advantages suggest that, if there is to be any imbalance in discovery rights, it should work in the defendant's favor,” *Id.*, 412 U.S. at 475 fn. 9.

16. Defendant, his counsel, and the Defense Map Team remain ready to assist in any plan to afford the defendant equal benefit to the basic technology necessary for a Defense Map. As shown in FAQ #24 if DefenseMap.com, the jail even has the option implementing a Security Zone version of the website to shut down electronic features like the Contact and Feedback links, the opportunity of inmates to place their Maps on their attorneys’ professional accounts, and the opportunity of attorneys (or anyone else outside the Security Zone) from accessing Defense Maps generated at the jail.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under the penalties for perjury that a copy of the foregoing motion was served contemporaneously with its filing upon Deputy Erie County Prosecuting Attorney, Adam Lynch, by use of the Court’s E-filing system.

/s/ R.W. Fairchild
R.W. Fairchild, Atty. No. 93-948883