

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS**

BARTON MCNEIL)	
)	
<i>Petitioner-Defendant</i>)	
)	No. 98 CF 0633
v.)	
)	Honorable William Yoder,
PEOPLE OF THE STATE OF ILLINOIS,)	Judge presiding.
)	
<i>Respondent-Plaintiff</i>)	

PETITIONER'S MOTION FOR DISCOVERY

NOW COMES Petitioner BARTON MCNEIL, by and through his attorneys, THE ILLINOIS INNOCENCE PROJECT and THE EXONERATION PROJECT at the University of Chicago Law School, and respectfully requests that this Honorable Court, pursuant to Illinois Supreme Court Rules 201(b)(1), 214, 412, and 415(b), grant him discovery in anticipation of the evidentiary hearing this Court ordered in this matter:

I. DISCOVERY REQUESTS

Petitioner asks the Court to grant him discovery in the following form:

1. Leave to subpoena all police reports and other documents and photographs in the possession of the Bloomington Police Department and the Illinois State Police regarding the Christina McNeil's death. This request encompasses any materials generated during the original investigation of this matter, prior to and during Petitioner's trial, and since Petitioner's trial.

2. Any notes, memoranda, recordings, transcripts, or other records of interviews with any witness in this matter conducted by any law enforcement officer or anyone working on behalf of the McLean County State's Attorney's Office, including any written or recorded statements taken from such witnesses regarding this matter from any point in time, including prior to the bringing of charges through the years since Petitioner's trial, including but not limited to any

investigation that occurred during post-conviction proceedings.

3. The disclosure by the State of any evidence that has not been previously tendered that would be deemed favorable to the defense (“*Brady* material”), including but not limited to evidence discovered or generated since Petitioner was convicted.

4. A written listing from the State of the names, the last known addresses, and the dates of birth of each individual the State intends to call as a witness at the evidentiary hearing, including production of the following:

- a. Any written or recorded statements by these witnesses, including those written or recorded statements made by police officers; and
- b. Any memoranda, notes, or other documents reporting or summarizing oral statements by such witnesses.

5. The production by the State of any books, papers, documents, photographs, or tangible objects that the State intends to use at the evidentiary hearing, including but not limited to using as impeachment material.

6. Any correspondence between any of the State’s or Petitioner’s potential witnesses and anyone acting on behalf of the State, including but not limited to, communications by letters and e-mail, and/or other forms of correspondence concerning any potential witnesses or facts relevant to this case.

7. The name and curriculum vitae of any expert the State intends to call as a witness at the evidentiary hearing in this matter, as well as the production of any documents reviewed by such experts; any reports, results, or statements made by such experts concerning this matter; documents concerning any physical or mental examinations, scientific tests, experiments or comparisons, etc. reviewed by or created by or on behalf of such experts concerning this matter; all communications between such expert and/or the expert’s agents and agents of the State.

8. Leave to subpoena police reports and other documents and photographs in the

possession of the Bloomington Police Department and the Illinois State Police regarding the investigation into the 2011 murder of Tyda Wang for which Misook Wang was convicted in Case No. 11 C F800.

9. Leave to subpoena all criminal records (including police reports, Crimestoppers tips, and any and all investigative documents and materials) regarding Misook Wang (nee Nowlin), who is an alternate suspect in this matter.

10. Leave to subpoena the following court records: family, orders of protection, dissolution, and juvenile abuse and neglect (including DCFS reports), regarding Misook Wang (nee Nowlin), who is an alternate suspect in this matter.

11. Production by the State of any reports, documents, electronic communications, letters, or any other materials regarding any investigation into or consideration of Misook Wang's potential involvement in the death of Christina McNeil, including but not limited to during the original investigation and prosecution of Petitioner and the later investigation and prosecution of Misook Wang for Linda Tyda's murder.

II. THIS REQUEST SATISFIES THE APPLICABLE DISCOVERY STANDARDS

12. The Court has the inherent authority to order discovery in post-conviction proceedings where the petitioner has shown "good cause." *See People v. Johnson*, 205 Ill.2d 381, 408 (2002); *see also People ex. rel. Daley v. Fitzgerald*, 123 Ill.2d 175, 183-83 (1988); *People v. Jakes*, 2013 IL App (1st) 113057, ¶ 25.

13. In the context of a discovery request prior to a post-conviction evidentiary hearing, the circuit court should permit discovery of materials that include "not only what is admissible at the trial but also that which leads to what is admissible." *Jakes*, 2013 IL App (1st) at ¶ 30 (quoting *People v. Kladis*, 2011 IL 110920, ¶ 26). A petitioner's discovery request should be allowed where it will help find evidence that "tends to prove or disprove something in issue." *Jakes*, 2013 IL

App (1st) at ¶ 30 (quoting *Kladis*, 2011 IL 110920, at ¶ 27). Material requested that “enhance[s] the truth-seeking process, [] enable[s] attorneys to better prepare for trial, [] eliminate[s] surprise and [] promote[s] an expeditious and final determination of controversies in accordance with the substantive rights of the parties” should be produced. *Id.*

14. To make the “good cause” determination, a court evaluates: (1) the issues presented in the petition; (2) the scope of the requested discovery; (3) the length of time between the conviction and the post-conviction proceeding; (4) the burden of discovery on the State and on any witness; and (5) the availability of evidence through other sources. *Johnson*, 205 Ill.2d at 408.

15. Petitioner requests relevant information and has good cause for each request. Specifically, each request seeks information that will tend to prove or disprove issues at the evidentiary hearing ordered by the Court, will enhance the truth-seeking process, allow both sides to better prepare for the hearing, eliminate surprise, and promote the expeditious and final determination of the issues.

WHEREFORE, for the reasons stated above, Petitioner requests that this Court grant his requests for post-conviction discovery.

DATED: March 10, 2023

Respectfully submitted,

BARTON MCNEIL

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