

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
vs.)
)
)
BARTON MCNEIL,)
)
Defendant.)

No. 1998-CF-633

McLEAN COUNTY
FILED
APR 19 2023
CIRCUIT CLERK

**PEOPLE’S RESPONSE TO DEFENDANT’S MOTION TO INTRODUCE EVIDENCE
CORROBORATING MISOOK NOWLIN’S CONFESSIONS**

NOW come the People of the State of Illinois, by Assistant State’s Attorney Mary Koll, and moves this Court to deny Petitioner-Defendant’s (hereinafter referred to as “Defendant”) Motion to Introduce Evidence Corroborating Misook Nowlin’s Confession (hereinafter referred to as “Motion”), and in support thereof hereby state as follows:


1. On October 11, 2022, this Court entered an Order advancing three of the claims in the Defendant’s Successive Postconviction Petition to a Third Stage evidentiary hearing:
 - a. Defendant’s Claim I.F. (“Dawn Nowlin’s Newly-Discovered Affidavit Averting that Misook Confessed to Don Wang”);
 - b. Defendant’s Claim I.G. (“Michelle Nowlin’s Newly-Discovered Affidavit Averting that Misook Confessed to Don Wang”); and

- c. Defendant's Claim I.I ("The Totality of the Evidence") as it relates to Claims I.F. and I.G. only.
2. This Order was proper as the trial court may grant a partial dismissal at the second stage. *People v. Lara*, 317 Ill.App.3d 905, 908 (3d Dist. 2000).
3. On March 10, 2023, Defendant filed this Motion requesting leave to introduce not only evidence of the two alleged "confessions," but also other evidence "that would tend to corroborate Misook Nowlin's confessions," including "evidence that her hair and DNA were present in the decedent's bed; Susanne Burn's evidence regarding Misook Nowlin's behavior the night of the death; evidence tha the only motive the State ever ascribed to Bart McNeil was predicated on fault scientific conclusions; and evidence that Misook Nowlin went on to commit another, similar murder."
4. Defendant cites to no direct authority for this request; rather, it provides two cases in support of its Motion.
 - a. *Chambers v. Mississippi*, 410 U.S. 284 (1973), is a United States Supreme Court opinion involving a direct appeal following a guilty verdict at jury trial. In that case, the Court held that the defendant's due process rights were violated when evidence of a third-party's oral confessions was excluded from the trial and the defendant was prevented from cross-examining the third-party as to the circumstances of his confessions.
 - b. *People v. Tenney*, 205 Ill. 2d 411 (2002), is an Illinois Supreme Court opinion involving a direct appeal following a guilty verdict at jury trial. In that case, the Court held that the defendant's due process rights were violated when evidence of a third-party's oral confession was excluded from the trial.

- c. Neither of those cases are relevant or applicable to the defendant's request. Both involve direct appeals rather than postconviction litigation, and neither provide any guidance or commentary on what evidence is admissible or relevant at a third-stage postconviction hearing.
5. As explained by this Court in its Order entered on October 11, 2022, "[p]etitioner's argument [that the trial court is required to consider all the evidence, both new and old, together] would seemingly negate the need for a stage 2 hearing wherein, as in this case, the State may move to dismiss certain claims and may concede that others should move forward to stage 3 hearing." To allow otherwise would be to permit a third-stage hearing to become a retrial of the entire case, rather than a limited-scope examination as to whether the defendant can meet its "burden of making a substantial showing of a constitutional violation" in connection with the claims that the court has determined merit advancement to third stage. *See People v. Pendleton*, 223 Ill.2d 458, 473 (2006). As this Court has already found that the remaining claims—even taken as true—did not meet the standard of "new, material, noncumulative evidence that is so conclusive it would probable change the result on retrial" as a matter of law, it would be inappropriate and illogical for the Court to conduct an evidentiary hearing involving those same claims.

WHEREFORE, for all of the above-stated reasons, the People of the State of Illinois respectfully request that this Court deny the Petitioner-Defendant's Motion to Introduce Evidence Corroborating Misook Nowlin's Confession.

Respectfully Submitted,



Mary Koll
Assistant State's Attorney

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorney(s) of record of all parties to the above cause by:

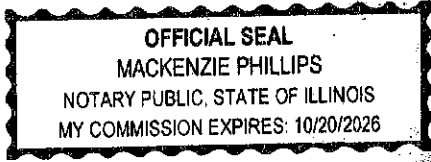
Depositing a true and correct copy of the same in the U.S. Post Office or post office box in the City of Bloomington, Illinois, enclosed in an envelope with postage fully prepaid on the 19 day of April, 2023.

Hand delivering a true and correct copy of the same on the ___ day of _____, 2023.

Kate Myers

Subscribed to and sworn before me
on this 19 day of April, 2023.

Mackenzie Phillips
NOTARY PUBLIC



IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN
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PEOPLE OF THE STATE OF ILLINOIS,)
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PEOPLE'S RESPONSE TO DEFENDANT'S MOTION FOR DISCOVERY

NOW come the People of the State of Illinois, by Assistant State's Attorney Mary Koll, and moves this Court to deny Petitioner-Defendant's (hereinafter referred to as "defendant") Motion for Discovery as to the requests in paragraphs I.1, I.2., I.3., I.8., I.9., I.10., and I.11., allow the Motion for Discovery as to the requests in paragraphs I.4., I.5., I.6., and I.7., and impose reciprocal and identical obligations on the defendant as set forth in paragraphs I.4., I.5., I.6., and I.7., and in support thereof hereby state as follows:

A. Procedural Posture

1. On October 11, 2022, this Court entered an Order advancing three of the claims in the Defendant's Successive Post-Conviction Petition to a third stage evidentiary hearing:
 - a. Defendant's Claim I.F. ("Dawn Nowlin's Newly-Discovered Affidavit Averring that Misook Confessed to Don Wang");

- b. Defendant's Claim I.G. (“Michelle Nowlin’s Newly-Discovered Affidavit Averring that Misook Confessed to Don Wang”); and
 - c. Defendant's Claim I.I (“The Totality of the Evidence”) as it relates to Claims I.F. and I.G. only.
2. On March 10, 2023, defendant filed this Motion for Discovery, which was subsequently scheduled for hearing on June 6, 2023. This response is filed in advance of the hearing.

B. *General Principles of Law Applicable to Discovery Requests in Post-Conviction Proceedings*

1. Neither the criminal nor civil discovery rules apply to postconviction proceedings; rather, “the circuit court has the inherent discretionary authority to order discovery in postconviction proceedings.” *People v. Williams*, 209 Ill. 2d 227, 235 – 236 (2004).
2. “This authority must be exercised with caution, because of the potential for abuse of the discovery process and because of the limited scope of postconviction proceedings.” *Id.* at 236.
3. The court should only allow a request for discovery after the movant demonstrates good cause for the request. *Id.*
4. In determining whether the movant has demonstrated good cause, the court should consider “the totality of the relevant circumstances, including the issues presented in the petition, ‘the scope of discovery sought, the length of time between the conviction and the post-conviction proceeding, the burden [of granting discovery,] and the availability of the desired evidence through other sources.’” *People v. Smith*, 817

N.E.2d 982, 999 (5th Dist. 2004) (citing *People ex rel. Dailey v. Fitzgerald*, 123 Ill.2d 175 (1988)).

5. This Court should be particularly wary of a request that amounts to a “fishing expedition in an attempt to create some doubt of defendant’s guilt,” as postconviction proceedings are “limited to providing a forum for the litigation of constitutional claims that were not presented in the original proceedings” and discovery requests must be narrowly tailored to that limited scope. *People v. Olinger*, 176 Ill. 2d 326, 343 (1997).
6. The rule announced in *Brady v. Maryland* does not extend to the post-conviction context. *District Attorney’s Office for the Third Judicial District v. Osborne*, 557 U.S. 52, 68 – 69 (2009). A postconviction petitioner’s “right to due process is not parallel to a trial right, but rather must be analyzed in light of the fact that he has already been found guilty at a fair trial, and has only a limited interest in postconviction relief. *Brady* is the wrong framework.” *Id.* at 69. Rather, Illinois Rules of Professional Conduct 3.8(g) sets forth a prosecutor’s ethical obligations at the postconviction stage, requiring a prosecutor to disclose “new, credible, and material evidence creating a reasonable likelihood” of innocence.

C. Response to Defendant’s Specific Requests

1. In connection with defendant’s request in paragraph I.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."), this request should be denied as the scope of the request is overly broad in light of the narrow claims that have been advanced to third stage and the defendant has not pled or demonstrated good cause for the request.

2. In connection with defendant's request in paragraph I.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 postconviction proceedings."), this request should be denied as the scope of the request is overly broad in light of the narrow claims that have been advanced to third stage and the defendant has not pled or demonstrated good cause for the request.
3. In connection with defendant's request in paragraph I.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."), this request should be denied as the *Brady* rule is not applicable to postconviction proceedings. The State has and will continue to comply with its ethical duties under Illinois Rule of Professional Conduct 3.8(g).
4. In connection with the defendant's request in paragraph I.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.”), the State agrees to comply with this request as it is reasonably related to the scope of the claims that will be litigated at the third stage hearing, will enable the attorneys to better prepare for the hearing, and will eliminate surprise. The State further requests that a reciprocal order be entered imposing an identical disclosure obligation on the defendant.

5. In connection with the defendant’s request in paragraph I.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.”), the State agrees to comply with this request as it is reasonably related to the scope of the claims that will be litigated at the third stage hearing, will enable the attorneys to better prepare for the hearing, and will eliminate surprise. The State further requests that a reciprocal order be entered imposing an identical disclosure obligation on the defendant.
6. In connection with the defendant’s request in paragraph I.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.”), the State agrees to comply with this request as it is reasonably related to the scope of the claims that will be litigated at the third stage

hearing, will enable the attorneys to better prepare for the hearing, and will eliminate surprise. The State further requests that a reciprocal order be entered imposing an identical disclosure obligation on the defendant.

7. In connection with the defendant's request in paragraph I.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."), the State agrees to comply with this request as it is reasonably related to the scope of the claims that will be litigated at the third stage hearing, will enable the attorneys to better prepare for the hearing, and will eliminate surprise. The State further requests that a reciprocal order be entered imposing an identical disclosure obligation on the defendant.
8. In connection with defendant's request in paragraph I.8. ("Leave to subpoena police reports and other documents and photographs in the possession of the Bloomington Police Department or Illinois State Police regarding the investigation into the 2011 murder of Tyda Wang for which Misook Wang was convicted in Case No. 11CF800."), this request should be denied as the scope of the request is overly broad in light of the narrow claims that have been advanced to third stage and the defendant has not pled or demonstrated good cause for the request.
9. In connection with defendant's request in paragraph I.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 alternative suspect in this matter.”) (emphasis added), this request should be denied as the scope of the request is overly broad in light of the narrow claims that have been advanced to third stage and the defendant has not pled or demonstrated good cause for the request.

10. In connection with defendant’s request in paragraph I.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 alternative suspect in this matter.”), this request should be denied as the scope of the request is overly broad in light of the narrow claims that have been advanced to third stage and the defendant has not pled or demonstrated good cause for the request.
11. In connection with defendant’s request in paragraph I.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.”), this request should be denied as the scope of the request is overly broad in light of the narrow claims that have been advanced to third stage and the defendant has not pled or demonstrated good cause for the request.

WHEREFORE, for all of the above-stated reasons, the People of the State of Illinois respectfully

moves this Court to deny defendant's Motion for Discovery as to the requests in paragraphs I.1, I.2., I.3., I.8., I.9., I.10., and I.11., allow the Motion for Discovery as to the requests in paragraphs I.4., I.5., I.6., and I.7., and impose reciprocal and identical obligations on the defendant as set forth in paragraphs I.4., I.5., I.6., and I.7.

Respectfully Submitted,


Mary Koll
Assistant State's Attorney

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorney(s) of record of all parties to the above cause by:

Depositing a true and correct copy of the same in the U.S. Post Office or post office box in the City of Bloomington, Illinois, enclosed in an envelope with postage fully prepaid on the 19 day of April, 2023.

Hand delivering a true and correct copy of the same on the ___ day of _____, 2023.

Kate Myers

Subscribed to and sworn before me on this 19 day of April, 2023.

Mackenzie Phillips
NOTARY PUBLIC

