

IN THE CIRCUIT COURT OF ST. FRANCOIS COUNTY, MISSOURI  
TWENTY-FOURTH JUDICIAL CIRCUIT

JEFFREY WEINHAUS	)	
Petitioner	)	
	)	Case No. 20SF-CC00053
v.	)	
	)	
STANLEY PAYNE, Warden	)	
Eastern Reception, Diagnostic	)	
and Correctional Center,	)	
Respondent.	)	

**Petitioner’s Reply to Respondent’s Suggestions in Opposition  
to Disclosure of Impeaching Evidence in its Possession**

Respondent’s counsel makes two claims in his Suggestions in Opposition:

- Petitioner already possesses the evidence he seeks (Opp., p.2);
- Warden Payne does not possess the *Brady* material sought by Petitioner, and even though some branch of the Attorney General’s Office does possess it, Petitioner should file a Sunshine request to try and find the ball the State is hiding (Opp., 3-6).

Petitioner replies:

1. Undersigned counsel can assure this Court that she is not seeking duplicative evidence, nor does she have time to engage in such frivolity. Petitioner does, in fact, possess a small portion of the *Brady* material that counsel was able to publicly access from Folsom’s appeal in *Folsom v. MSHP*, WD82081, and those documents are contained in Petitioner’s appendix. That information was submitted by Folsom himself, presumably waiving any claim of privilege. Again, Respondent, in its original response to the Show Cause Order, did not dispute the veracity of the Folsom *Brady* evidence, only its materiality. If Respondent concedes,

- as he has, that the evidence exists, that it falls under *Brady*, and is possessed by the State, then Respondent must disclose it to Petitioner.
2. The *Brady* evidence Petitioner seeks in his Motion for Disclosure is the *Brady* evidence about Folsom that the State *has yet to disclose*, which was delineated in his motion and which is within the State's possession.
  3. As set out in Petitioner's Motion for Disclosure, this impeachment evidence is discoverable and must be disclosed. *Brady v. Maryland*, 373 U.S. 83 (1963); *Strickler v. Greene*, 527 U.S. 263, 281-282 (1999). "[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).
  4. Respondent's counsel claims that Respondent Payne is exempt from turning over *Brady* evidence because he, himself, does not physically possess it; this is demonstrably incorrect. Again, Respondent's counsel does not – and cannot – dispute the existence of this evidence, because it is within the possession of the Attorney General's office.
  5. The Warden retains custody of Petitioner Weinhaus and is part of the state's law enforcement community – no less than the Missouri State Highway Patrol who investigated Petitioner, the Prosecutor who tried him, and the Attorney General who represented the State to uphold his convictions. As aptly stated by our Missouri Supreme Court, "...the entire law enforcement community, represent the state. The state's interest in the criminal trial is not in convicting the innocent but that justice be done." *State v. Robinson*, 835 S.W.2d 303, 306–07 (Mo. 1992) (citing *See United States, Bagley*, 473 U.S. 667, 675 & n. 6, 105 S.Ct. at 3380 & n. 6).
  6. In *Robinson*, the duty of the law enforcement community required the disclosure of the psychiatric records of the victim. 835 S.W.2d at 306-307.

As a result of this disclosure, defendant was able to show the jury an “Encyclopedia Britannica” of psychological reports on the complainant, the previous apparently false reports, and a treating physician's view. *Id.* The Missouri Supreme Court held that the State cannot evade its duty of disclosure by never gaining “possession” of these medical records, because this approach fails to recognize the nature of the prosecutor's role in the system. *Id. See also State v. Zuroweste*, 570 S.W.3d 51, 57–58 (Mo. banc 2019) (noting the “affirmative requirement of diligence and good faith on the state to locate records not only in its own possession or control but also in the control of other governmental personnel.”)

7. The United States Supreme Court has also weighed in on whether a Warden must respond to discovery requests in habeas corpus proceedings. See *Harris v. Nelson*, 394 U.S. 286 (1969). There, Respondent Warden Nelson argued against providing discovery because the warden, himself, did not have the knowledge or information to respond. *Id.* at 296. The Supreme Court brushed that argument away, stating:

[The rule] provides for written interrogatories to be served by any party upon any "adverse party." As the present case illustrates, this would usually mean that the prisoner's interrogatories must be directed to the warden although the warden would be unable to answer from personal knowledge questions relating to petitioner's arrest and trial. Presumably the warden could solicit answers from the appropriate officials and reply "under oath," as the rule requires; but the warden is clearly not the kind of "adverse party" contemplated by the discovery rules, and the result of their literal application would be to invoke a procedure which is circuitous, burdensome, and time consuming.

The Court reaffirmed *Harris v. Nelson* in *Bracy v. Gramley*, 520 U.S. 899, 908-909 (1997), wherein the habeas petitioner argued that he had “good cause” to warrant the Court to order discovery from Warden Gramley on a judicial bias claim. The Court held that the habeas petitioner was entitled to discovery, noting, “where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is ... entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry.” *Id.*, (quoting *Harris v. Nelson*, 394 U.S. at 300).

8. The same holds true here. While Respondent’s counsel seeks to avoid the State’s continuing duty of disclosure under *Brady* by claiming that Warden Payne does not, himself, possess the material, the fact is that the Warden is a state employee, part of the state’s law enforcement community, and the State does possess this evidence. He is obligated to turn it over to Petitioner.

Wherefore, for all of the above-stated reasons, Petitioner requests an order from this Court requiring disclosure of the impeachment evidence that is the subject of his Petition for Habeas Corpus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> day of September, 2020, a true and correct copy of the foregoing was served electronically using the Missouri Supreme Court's electronic filing system on Assistant Attorney General Michael J. Spillane.

/s/ Amy M. Bartholow  
Amy M. Bartholow