

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.)	

Motion for Respondent to Disclose Impeaching Evidence in its Possession, including Copies of Sealed Records in *Folsom v. MSHP*, Cole County Case No. 16AC-CC00150

Petitioner, Jeffrey Weinhaus, by undersigned counsel, has filed a Petition for Habeas Corpus that is pending before this Court. Because Respondent, through the Attorney General’s Office, has yet to disclose any of the impeaching evidence regarding its key witness at Mr. Weinhaus’ trial – Henry J. Folsom – which undersigned counsel has a good-faith basis to believe is in Respondent’s possession, Mr. Weinhaus requests an Order instructing Respondent to disclose this evidence in preparation for litigation in this Cause. In support, Petitioner submits:

1. Mr. Weinhaus’ trial counsel filed a standard discovery request, which included, among other items, “any material or information within the possession or control of the State or its agents which tends to negate the guilt of the defendant as charged, mitigate the degree of the offense charged, or reduce punishment.” See Rule 25.03. (Lf.26-29).

2. Impeachment evidence is discoverable and must be disclosed. Under *Brady v. Maryland*, 373 U.S. 83 (1963), due process requires that the prosecution disclose to the defendant any evidence in its possession that is favorable to him and that is material to his guilt or punishment. *State ex rel. Engel v. Dormire*, 304 S.W.3d 120, 127 (Mo. 2010). Impeachment evidence is *Brady* evidence. *Strickler v. Greene*, 527 U.S. 263, 281-282 (1999). And *Brady* provides that “the 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).
3. The duty to disclose is continuing. Under Rule 25.08, after complying with a request for disclosure or order of court, a party discovers information or material that the party would have been required to disclose under the request or order, the party shall furnish this additional information or material to opposing counsel as soon as practicable[.]” See also, *Embler v. Pachtman*, 424 U.S. 409, 427 n.25 (1976) (“after a conviction the prosecutor also was bound by the ethics of his office to inform the appropriate authority of after-acquired or other information that casts doubt upon the correctness of the conviction.”)
4. For all of the reasons set forth in Mr. Weinhaus’ Petition, undersigned counsel has a good-faith basis to believe that the Attorney General’s Office, having represented the Missouri State Highway Patrol against Sgt. Folsom in Folsom’s civil wrongful termination lawsuit, Cole County Case No. 16AC-CC00150, is in possession of impeaching evidence regarding Folsom – including, but not limited to, internal investigative reports and memoranda concerning Folsom’s job performance, all medical and

psychiatric reports, records, and depositions concerning Folsom's PTSD diagnosis, treatment and medications, and its effects on his fitness for duty, and records regarding his termination from MSHP employment.

5. Because Respondent failed to disclose this information before Mr. Weinhaus' trial, or at any point thereafter, and because Mr. Weinhaus only learned of this information through the published opinion in *Folsom v. MSHP*, 580 S.W.3d 645 (Mo. App. W.D. 2019), and because this *Brady* issue is currently pending in Mr. Weinhaus' Petition, undersigned counsel formally requests that this Court to order Respondent, through the Attorney General's Office, to disclose the records referenced in Paragraph 4 above, subject to whatever restrictions on dissemination that this Court deems just and proper under the circumstances.

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,

/s/ Amy M. Bartholow
Amy M. Bartholow, MOBar #47077
Assistant State Public Defender
Woodrail Centre
1000 West Nifong, Building 7
Suite 100
Columbia, Missouri 65203
(573) 777-9977
Fax 573-777-9974
Amy.bartholow@mspd.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd 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