

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JUANE T. KENNELL,)
)
 Petitioner,)
)
 v.) Case No. 4:09-CV-407 AGF
)
 DAVE DORMIRE,)
)
 Defendant.)

**PETITIONER'S RENEWED MOTION FOR DISCOVERY, FOR
RELEASE OF DOCUMENTS FROM THE PUBLIC DEFENDER'S
OFFICE REVIEWED BY THE COURT *IN CAMERA*, AND
FOR AN EVIDENTIARY HEARING**

COMES NOW petitioner, Juane T. Kennell, by and through counsel, and moves the Court for full discovery in this matter, including the release to petitioner's attorney of the documents from the public defender's office that this Court received and reviewed *in camera* in 2012, and for an evidentiary hearing on petitioner's *Brady v. Maryland*, 373 U.S. 82 (1963), claim. In support of this motion, petitioner's states as follows:

Petitioner was blindsided by this Court's order and judgment issued yesterday in the case of co-defendant Christopher White, where this Court ruled on White's petition and denied relief despite the fact that discovery had not been completed and no evidentiary had been held. Counsel for the petitioner, as well as counsel for Mr.

White, assumed that once this Court completed its *in camera* review of public defender documents, it would release any documents that were relevant to counsel for petitioners so that they could file a supplemental traverse in support of the *Brady* claim and renew their request for an evidentiary hearing. Regardless of who is at fault for this misunderstanding, it is apparent that both petitioner and Mr. White will be denied a full and fair review of their *Brady* claim if this Court issues a final judgment now.

In his traverse, Mr. Kennell explicitly requested an evidentiary hearing after discovery was completed. (See Doc. 27, p.23). After this Court's hearing of March 7, 2012, counsel for both petitioners received discovery from the prosecuting attorneys office and this Court viewed the public defender documents *in camera*. In addition, counsel for both petitioner and Mr. White conducted independent investigation for additional evidence and witnesses to support their *Brady* claims and other claims for relief.

With regard to state's witness Robert Stewart , counsel for petitioner learned he was incarcerated in the Panhandle of Florida and hired a local investigator to interview and hopefully obtain an affidavit from him. Investigator David Haubrich interviewed Mr. Stewart and, although he did not provide an affidavit, Stewart provided other relevant and exculpatory evidence indicating that he could not

identify petitioner or Mr. White as the shooters, that he was coached into identifying Kennell and White by Jeffrey Shockley, and that it was apparent to him that Mr. Shockley had a deal with the state to testify against both Kennell and Stewart. Mr. Haubrich's affidavit is attached to this motion as Exhibit 7.

In addition, the prosecution disclosed a document through discovery which petitioner intended to utilize in a supplemental traverse and in an evidentiary hearing and through live witnesses, that Jeffrey Shockley was offered an SIS and two years probation in exchange for his testimony against petitioner. This offer by itself, which was not disclosed to counsel before trial, constitutes a *Brady* violation regardless of whether Mr. Shockley ultimately pleaded guilty under this plea bargain. This plea bargain agreement is attached to this motion as Exhibit 8.

It is also clear that this *Brady* claim cannot be adequately resolved without an evidentiary hearing.¹ Counsel for Mr. White has located Mr. Shockley who was released from federal prison, and purportedly is on supervised release. At a future hearing, as well as the aforementioned evidence and documents, petitioner would seek to subpoena and have Jeffrey Shockley testify under oath whether he received inducements such as a favorable plea bargain and monetary compensation to testify

¹Attached to this motion as Exhibit 9 is the affidavit of Jerome Johnson, Shockley and Stewart's co-defendant. He will also provide relevant exculpatory evidence at a future hearing.

against petitioner and Mr. White. Petitioner would also subpoena and call Mr. Shockley's attorney Robert Taase at this hearing.

In light of the foregoing facts, petitioner Juane Kennell respectfully requests that this Court delay issuing a final judgment until these discovery issues are resolved, release the public defender documents reviewed *in camera* to counsel, and thereafter allow a supplemental traverse to be filed and, hold an evidentiary hearing on petitioner's *Brady* claim.

Respectfully Submitted,

/s/ Kent E. Gipson
Kent E. Gipson, Mo. Bar No. 34524
Law Offices of Kent Gipson, LLC
121 East Gregory Blvd.
Kansas City, Missouri 64114
Tel: 816-363-4400 • Fax: 816-363-4300
Email: kent.gipson@kentgipsonlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all counsel of record.

/s/ Kent E. Gipson
Kent E. Gipson

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EXHIBIT 7

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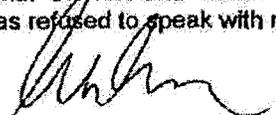
Stewart told me that he later learned that "Smurf" was the nickname for Juane Kennell and "Little Chris" was the nickname for Christopher White. Stewart said that he didn't personally know or ever meet Smurf or Little Chris, but prior to the shooting incident that killed Chew, Jeff Shockley had been shot at more than once when Stewart was with him by men that Shockley told Stewart were this Smurf and Little Chris.

- c. Stewart said that on the day of the incident, he and Shockley were smoking pot on the front porch of a house a few doors down from Shockley's residence. Stewart said that it was very early in the morning and was still nearly dark out when he noticed a car pull up and stop in the middle of the street in front of Shockley's house, and saw three men get out of the car with obviously large guns drawn. Stewart said that it was too dark for him to clearly see the faces or identities of the men who got out of the car, but when he pointed them out to Shockley, Shockley said, "that's Smurf and Little Chris." Stewart told me this made sense to him, since Smurf and Little Chris had shot at Shockley prior to this.
- d. Stewart said the shooting began shortly thereafter, and that by the time Chew was shot, it was getting a little bit lighter outside. Stewart said that he saw the men from the car shooting at them, but remembers the guns more clearly than the men, and said he didn't get a good look at the shooters before he escaped.
- e. Stewart said that when he and Shockley were subsequently questioned by the police, they were questioned in separate rooms. Stewart said that his room had a two-way mirror in it, and he later wondered if Shockley was watching his questioning. Stewart said that the police showed him six photographs of men in a photo lineup, but that he had trouble identifying which of the men were involved in the shooting. Stewart said that the cop questioning him suggested that he "take a break," and Stewart went into a break room and got a soda and was soon joined by Shockley, who conveniently was on a break at the same time. Stewart said that he told Shockley he couldn't really tell which photographs were the pictures of the shooters, and that Shockley "coached" him and told him that Smurf had darker skin while Little Chris was light-skinned. Stewart said that after he spoke with Shockley in the break room, he was able to go back and choose the photos that best fit Shockley's descriptions of Smurf and Little Chris.
- f. Stewart said that he thinks it probably was the same guys whom Shockley had previously told him were Smurf and Little Chris that shot and killed Chew, and that he thinks this because of the previous gun battles between Shockley and these men. Stewart repeated that he didn't see the men clearly enough to ID them, except maybe the guy who had pointy ears who was called "Wimpy."
- g. Stewart said he never heard Shockley himself say that he had been offered some kind of a deal, but it was obvious, because he never went to prison on his serious charges, although he later got into more trouble and may have ended up in prison. Stewart repeatedly said that "there was something going on between

the police and Shockley," but that he himself didn't have an ongoing case and wasn't offered any deal.

- 5. I gave Robert Stewart my card and attorney Kent Gipson's card, and said we would be back in touch about a more formal statement. Stewart expressed a desire to not go back to St. Louis as a prisoner to testify in this case, because of the bad jails and gangs there. Stewart expressed to me that he would be willing to give me a sworn statement if he could get permission from his attorney.
- 6. I have made numerous subsequent attempts to obtain a sworn statement from Mr. Stewart:
 - a. On 7 August 2012 I called Alternate Defense Counsel attorney Amanda Kelley's office and left a message for her concerning permission for a sworn statement from Stewart. I was told that Ms. Kelley was out on maternity leave and that other attorneys are filling in for her.
 - b. On 8 August 2012 I went to Pre-Trial hearings in Bay County Circuit Court, and waited for Mr. Stewart's case to be called on the docket. I spoke with attorney Sarah Konwinski, the Alternate Defense Counsel attorney who was covering Stewart's case that day. She spoke with Mr. Stewart and then told me that he is not willing to give me a sworn statement because his own Bay County case is pending.
 - c. On 21 August 2012 I again went to Bay County Jail in an effort to obtain a sworn statement from Mr. Stewart. He refused to speak with me. I have made numerous other attempts to meet with Stewart and obtain a sworn statement from him; on each attempt Stewart has refused to speak with me.

Further Affiant Sayeth Naught.



 David L. Haubrich

STATE OF FLORIDA)
 COUNTY OF BAY)

BEFORE ME, the undersigned authority, personally appeared David Haubrich, being first duly sworn on oath, deposes and says that he has read the foregoing Affidavit and that the information is true and correct to the best of his knowledge, information and belief.

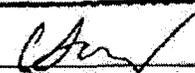
SUBSCRIBED and sworn to before me this 9 day of October, 2012, by David L. Haubrich, who is personally known to me or produced _____ as identification.

WITNESS my hand and official seal.

My commission expires: _____



[SEAL]



 Notary Public

EXHIBIT 8

A-210

STATE OF MISSOURI)
)
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI,)
)
Plaintiff,)
)
vs.)
)
JEFFERY SHOCKLEY,)
)
Defendant,)

Cause No. 021-715
Division 19

STIPULATION AND PLEA AGREEMENT

Comes now the parties pursuant to Missouri Supreme Court Rule 24.02(d) 1 (c) and hereby stipulate and agree that the following facts are relevant for the purpose of plea and sentencing in the above cause, and that the following are the agreements of the parties:

1. THE PARTIES

The parties to this stipulation and the agreements contained herein are the defendant JEFFERY SHOCKLEY, his counsel Robert Taaffe, and the State of Missouri, by and through, Assistant Circuit Attorney Belinda Spaeth.

2. THE PLEA AGREEMENT

In exchange for the defendant's voluntary plea of guilty in this cause the parties agree that the following plea agreement is appropriate:
A sentence of a Suspended Imposition of Sentence, two (2) years of supervised probation, completion of REACT, 60 hours of community service and the payment of court costs within 180 days. As a condition of this plea agreement, Defendant shall cooperate fully with the State of Missouri in the prosecution of Jvane Kennel in the death of Freddie Chew and the Injuring of the Defendant, such event occurring on June 21, 2002. As a further condition of this plea agreement, Defendant shall cooperate fully with the State of Missouri in the prosecution of Christopher White in the death of Freddie Chew and the Injuring of the Defendant, such event occurring on June 21, 2002. As a further condition of this plea agreement, Defendant shall cooperate fully with the State of Missouri in the prosecution of Dwayne Shockley in

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the deaths of Jasciona Hill and Mario Woolfolk such event occurring on July 26, 2002. All such cooperation shall include, but is not limited to, participating in interviews, testifying at depositions, and testifying at any and all hearings related to these matters, and otherwise appearing as requested by the State. Defendant agrees, and is bound to tell the entire truth at any such proceedings. Defendant agrees that if he fails to cooperate with the State, or if he fails to testify truthfully, that the State shall have the right to request the Court to sentence the defendant in excess of the agreed sentence, and to reinstate the charge in this matter for trial.

By this binding agreement the parties acknowledge that the sentencing agreement set forth and the stipulations set forth led to the guilty plea in this case and that each party has a right to rely upon and hold the other party to the agreements and stipulations herein at the time of sentencing. The parties further agree that neither party shall request a different disposition of this matter unless that disposition is addressed in this document or the request is made with the consent of both parties.

3. WAIVER OF PCR (RULE 24.035) RIGHTS

The parties further agree that the defendant having been fully advised of and fully understood his right to file a motion to vacate, set aside or correct the judgment or sentence pursuant to Missouri Supreme Court rule 24.035, does waive all rights pursuant to this rule.

4. FACTS

The parties state that the facts in this case are as follows, and that the State of Missouri would prove these facts beyond a reasonable doubt:

On February 18, 2002, in the 4900 block of Arlington, during a pedestrian check, police officers observed the defendant in possession of loaded .25 caliber semi-automatic pistol. Prior to observing the pistol, it was completely concealed from the officers' view. The gun was test-fired at the police laboratory and found to be operable. Defendant was arrested for the concealed firearm. Search incident to arrest revealed sixteen plastic baggies of a substance that lab analysis revealed to be 1.89 grams of cocaine base.

The defendant and the State of Missouri agree that the facts set forth are true and accurate.

5. PENALTIES

The defendant fully understands that the range of punishment for each count is as follows:

Count I: Class C felony which carries a range of punishment of one day to seven years in the Missouri Department of Corrections and/or a fine up to, and including, \$5,000.00.

Count II: Class D felony which carries a range of punishment of one day to five years in the Missouri Department of Corrections and/or a fine up to, and including, \$5,000.00.

6. THE DEFENDANT'S RIGHTS

The defendant has been fully advised of his constitutional rights by his attorney, and fully understands that he has an absolute right to plead not guilty to the charges; that he has the right to be tried by a jury; that at such trial he would be presumed innocent and that he has the right to require the State of Missouri to prove the entire case against him beyond a reasonable doubt; that he has the right to the assistance of counsel and that counsel will be appointed for him if he cannot afford one himself; that he has the right to confront and cross-examine witnesses against him and present witnesses on his behalf; that he has the right not to testify or be compelled to incriminate himself; the defendant fully understands that, by this guilty plea, he expressly waives all the rights set forth in this paragraph. Defendant's attorney has explained these rights to him and the consequences of his waiver of those rights. Defendant fully understands that as a result of his guilty plea there will be no trial. The defendant states that he is fully satisfied with the representation that he has received from his counsel. He has discussed the State's case and all possible defenses and defense witnesses with his counsel. His counsel has completely and satisfactorily investigated his case and has complied with all requests made by the defendant.

7. NO PROMISE OR INDUCEMENT OUTSIDE THIS DOCUMENT; NO THREATS OR COERCION:

This agreement constitutes the entire agreement between the defendant and the State of Missouri, and no other promises or inducements have been made, directly or indirectly concerning any plea to be entered in this case, or the stipulations or agreements found herein. In addition the defendant states that no person has, directly or indirectly, threatened or coerced him to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty.

8. CONSEQUENCES OF FURTHER CRIMINAL CONDUCT BY DEFENDANT OR THE RECEIVING OF ADDITIONAL INFORMATION REGARDING THE DEFENDANT'S BACKGROUND.

The defendant fully understands that, should he engage in any criminal activity between the time he signs this agreement and the time of plea and/or sentencing, or the State receives additional information regarding the defendant's criminal background that was previously unknown to the State, the State shall be released from any obligation created by this agreement and from any limits on the State's power to prosecute the defendant.

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Date

Jeffery Shockley
Defendant

Date

Robert Taaffe
Attorney for Defendant

Date

Belinda Speeth
Assistant Circuit Attorney

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EXHIBIT 9

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DECLARATION OF JEROME C. JOHNSON

1. My name is Jerome C. Johnson. I am twenty-seven years old and capable of making this declaration.
2. I am currently confined at the St. Louis County Justice Center located at 100 South Central Avenue, Clayton, MO, 63105.
3. I grew up with Jeffrey Shockley in the O'Fallon Park neighborhood of the City of St. Louis, Missouri. I first met Jeffrey Shockley through his cousin, Travelin Glass. I met Robert Stewart in approximately 2001 through his cousin Chris Walker. I was friends with both Stewart and Shockley. After meeting Stewart, I would go over to Shockley's house on Arlington Avenue in the City of St. Louis a couple of times a week and Stewart's house on the 4200 block of Red Bud Avenue in the City of St. Louis almost every day. Stewart and Shockley always hung out together.
4. I remember first hearing about Freddie Chew's shooting from Travelin Glass. I also remember a few days after Chew was killed, Shockley and Stewart telling me that they were involved in the shoot out. They told me that three men in a car drove up and began shooting.
5. Shockley and Stewart told me they could not identify the shooters because they were wearing ski masks. They also told me that they thought the shooters were those "dudes off Geraldine" but they were not sure. They guessed that "Smurf" and "50C" were two of the shooters. The reason that Shockley and Stewart believed that "Smurf" and "50C" were the shooters is because Shockley and Stewart had shot at

Smurf's younger brother Peso prior to Chew's shooting.

6. I know that Juane Kennel's nickname was "Smurf" and that Christopher White's nickname was "50C."

7. On July 1, 2002, after Shockley and Stewart told me about the shooting of Chew, officers from the St. Louis Metropolitan Police Department in the City of St. Louis stopped a vehicle driven by Shockley in which Stewart and I were passengers. After the police officer told us to get out of the car, he searched the car finding a Glock 9mm pistol and a loaded magazine round under the front passenger seat where I was sitting. Because of the pistol under my seat, the police arrested me for the unlawful use of a weapon. The police patted us down and found marijuana on Shockley. Also, during the search under the front passenger seat of the car, the police found two plastic baggies containing drugs. The police arrested Shockley for possession of marijuana and Stewart for both possession of marijuana and a controlled substance.

8. I did not know that there was a pistol and magazine under the front passenger seat prior to me getting into the car.

9. After my arrest, I was prosecuted for the felony charge of unlawful use of a weapon in the City of St. Louis. Because I had caught a case, I was really upset with Shockley and Stewart. When I got in Shockley's car, they did not tell me there was a gun under my seat. If I had known about the gun, I would not have gotten into the car in the first place. I felt that one of them should take the case as it was not mine.

10. If my unlawful use of a weapon case had gone to trial, it is my belief that Stewart was going to testify against me and say it was my gun.

11. While my unlawful use of a weapon case was pending, I confronted Shockley and Stewart at Stewart's uncle's house about putting the case on me. I secretly recorded Shockley stating that he did know that Stewart had put his gun under the front passenger seat. My lawyer, Brad Kessler, eventually got the unlawful use of a weapon charge dismissed.

I, Jerome C. Johnson, declare under penalty of perjury that the foregoing is true and correct. Executed on this 24th day of October, 2012.

Jerome Johnson
Jerome C. Johnson