

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JUANE T. KENNEL,)	
)	
Petitioner,)	
)	
v.)	No. 4:09-CV-407 AGF
)	ECF
DAVE DORMIRE,)	
)	
Respondent.)	

SUGGESTIONS IN OPPOSITION TO PETITIONER'S
MOTION TO AUTHORIZE DISCOVERY

Comes now respondent, by and through counsel, and states as follows as his suggestions in opposition to petitioner's April 22, 2010 motion to authorize discovery.

Petitioner requests authorization for discovery concerning two witnesses who testified for the state during petitioner's criminal trial. But for each witness, petitioner merely speculates about the existence of information to support a claim under Brady v. Maryland, 373 U.S. 83 (1963), and such speculation is insufficient cause for discovery under Rule 6 following 28 U.S.C. §2254.

As to witness Robert Stewart (Tr. 560), petitioner suggests that Stewart was arrested on July 1, 2002 but the charge was dismissed before Stewart's enlistment in the Army in 2002 (First Amended Petition, page 10). Assuming the suggestion were true, and assuming that the suggestion was not disclosed, petitioner cannot show prejudice under Brady. To state a Brady claim, the alleged information that was not disclosed must

be "material." Phrased another way, the undisclosed information must create a reasonable probability that the outcome of the trial would have been different. Strickler v. Greene, 527 U.S. 263 (1999); Strickland v. Washington, 466 U.S. 668 (1984).

The record reflects that petitioner's murder of Mr. Chew occurred on June 21, 2002 (Tr. 562-63). Later that day, Stewart had informed the police of petitioner's involvement (Tr. 585). On June 21, 2002, Stewart picked out petitioner's photograph (Tr. 586-88). Shortly thereafter, Stewart picked out petitioner from a line-up (Tr. 588-89). The witness's identification of petitioner occurred before the alleged arrest on July 1, 2002. Because the inculpatory information came in to existence before the alleged arrest, petitioner cannot show a reasonable probability that the outcome of the proceeding would have been different.¹

As to witness Shockley, petitioner again complains that Shockley was arrested on July 1, 2002 (Motion, page 2). Similarly, Shockley identified petitioner before that alleged arrest. Shockley spoke with the police on June 21, 2002 (Tr. 522-23). Shockley identified petitioner's photograph that day (Tr. 523-26). Shockley identified petitioner from a live line-up on June 26, 2002 (Tr. 526-28). Again, Shockley identified petitioner before the alleged July 1, 2002 arrest.

Finally, petitioner contends that the state did not disclose a "deal" between Shockley and the state concerning the disposition of charges in State v. Shockley, No.

¹ Petitioner also suggests that a weapon used at the Arlington shootout was confiscated during the July 1, 2002 arrest (Motion, page 2). But the record was clear that the murder victim fired his weapon many times into the street (Tr. 454, 517-18, 576). It was also clear that Jeffry Shockley fired his weapon (Tr. 519, 578-79). Again, petitioner can show no Brady prejudice.

021-00715. The pending charge was discussed at Christopher White's, the co-defendant's, trial (Suggestions Exhibit A). Additionally, the fact that there was no deal made was also discussed during that proceeding (Tr. 555-56). That testimony under oath is confirmed at the February 9, 2004 guilty plea by Mr. Shockley (Petitioner's Exhibit 1), when Mr. Shockley's counsel announced, "this plea is made open. We have no agreement with the State of Missouri" (Petitioner's Exhibit 1, page 2). This understanding is confirmed later during the proceeding (Petitioner's Exhibit 1, page 12). Interestingly, in his motion, petitioner does not attach an affidavit from petitioner's counsel, Ms. Ibe, indicating the Shockley information was not disclosed, only affidavits from appellate attorneys.

To support his case, petitioner attaches petitioner's Exhibit 4, a computer generated unsigned and unsworn document containing multiple layers of hearsay. And in contrast, Shockley's lawyer, as an officer of the court, represented to the court, that Shockley was pleading guilty without a deal. Petitioner presents no recantation by the officer of the court. The in-court testimony should trump the hearsay proffered by petitioner.

WHEREFORE, for the reasons herein stated, respondent prays that the Court deny petitioner's motion to authorize discovery.

Respectfully submitted,

CHRIS KOSTER
Attorney General

/s/ Stephen D. Hawke
STEPHEN D. HAWKE
Assistant Attorney General
Missouri Bar No. 35242

P. O. Box 899
Jefferson City, MO 65102
(573) 751-3321
(573) 751-3825 fax
stephen.hawke@ago.mo.gov
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed by using the CM/ECF system; thus, undersigned counsel should receive notice of the filing and the document through the CM/ECF service:

Kent E. Gipson
Attorney at Law
301 East 63rd Street
Kansas City, MO 64113

/s/ Stephen D. Hawke
Stephen D. Hawke
Assistant Attorney General

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

CHRISTOPHER WHITE,

Appellant,

vs.

STATE OF MISSOURI,

Respondent.

Appeal No. ED-84232

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

Honorable Robert H. Dierker, Jr., Judge

STATE OF MISSOURI.

Plaintiff,

vs.

CHRISTOPHER WHITE.

Defendant.

Cause No. 021-02368

TRANSCRIPT ON APPEAL
JANUARY 12 - 16, 2004
VOLUME II

MR. ROBERT CRADDICK
MS. MARY PAT BENNINGER
Assistant Circuit Attorneys,
on behalf of the State of Missouri;

MS. TARA CRANE
MS. MICHELLE MONAHAN
Assistant Public Defenders,
on behalf of the Defendant.

MARGARET E. WALSH, CCR, RPR, CRR
OFFICIAL COURT REPORTER
CITY OF ST. LOUIS CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT

Juane Kennell v. Dave Dormire
No. 4:09-CV-407 AGF
Suggestions Exhibit A

1 A Right.
 2 Q And you look at the lineup, correct?
 3 A Right.
 4 Q With the detectives.
 5 A Right.
 6 Q And he's on the other side of the window.
 7 A Right.
 8 Q And you pick Smurf, who you believe is Smurf,
 9 out of that lineup.
 10 A Right.
 11 Q You're looking for Smurf.
 12 A Right.
 13 Q And then a few days after that, you have to come
 14 back down to the police station again.
 15 A Right.
 16 Q And at that point, you're looking for
 17 Christopher White at that point.
 18 A Right.
 19 Q And you do the same thing with the physical
 20 lineup.
 21 A Um-hum.
 22 Q You're there with the detectives.
 23 A Right.
 24 Q You're on one side of a window, correct?
 25 A Right.

1 Q Five men are on the other side of the window.
 2 A Right.
 3 Q And you pick Christopher White out of those
 4 five men.
 5 A Right.
 6 Q Because that's who you believe the shooter is.
 7 A Right.
 8 Q You weren't cooperating with the police at
 9 first.
 10 A Right.
 11 Q But you're cooperating now.
 12 A Right.
 13 Q And isn't it true that you have a pending
 14 felony here in the City of St. Louis?
 15 A Right.
 16 Q Charged by the prosecutor's office.
 17 A Right.
 18 Q Now, I would like to show you what is
 19 Defendant's Exhibit N. And you had talked before about
 20 what type of guns you and Fred and Robert had.
 21 A Right.
 22 Q Okay. And you indicated that you had a Glock
 23 9 millimeter pistol.
 24 A Right.
 25 Q I'm showing you Defendant's Exhibit N. Do

536

536

1 you recognize it?
 2 A Yes.
 3 Q What is it?
 4 A A Glock 9 millimeter.
 5 Q Is that similar to the gun that you had on the
 6 night of June 21st?
 7 A Yeah.
 8 Q Now, I'd like to show you what's been marked
 9 as Defendant's Exhibit N -
 10 MR. CRADDICK: I'm sorry. I thought the first
 11 was N, as in Nancy.
 12 MS. CRANE: N, as in Nancy. This is N, as in
 13 Mike.
 14 MR. CRADDICK: Okay. Thank you.
 15 Q (By Ms. Crane) Do you recognize that?
 16 A Yes.
 17 Q What is that?
 18 A A 9 millimeter Ruger.
 19 Q I'm sorry, could you speak -
 20 A A 9 millimeter Ruger.
 21 Q Okay. And is that the type of gun, similar to
 22 what Fred had that night on the porch?
 23 A Yes, sir.
 24 Q And these are the guns that you describe as
 25 being automatic.

1 A Right.
 2 Q Thank you.
 3 Now I'd like to show you what's been marked
 4 as Defendant's Exhibit D. Do you recognize it?
 5 A Yes.
 6 Q And what is it?
 7 A Fred's house.
 8 Q Fred's house?
 9 A Right.
 10 Q And is that a fair and accurate reflection of
 11 Fred's house?
 12 A Yes.
 13 Q And can you describe - show it to the jury
 14 and describe - point to where it is that you pointed
 15 off - jumped off on the porch at?
 16 A (Indicating).
 17 Q Okay. And you fell down and into the
 18 gangway right there.
 19 A Yes, ma'am.
 20 Q Next to that water spout.
 21 A Yes, ma'am.
 22 Q Okay. I'd like to show you now what's been
 23 marked as Defendant's Exhibit C. Do you recognize it?
 24 A Yes.
 25 Q And what is it?

A-168

1 A Right.
 2 Q Okay. Whatever you did with the police and
 3 whatever you told the police and whatever you did in
 4 common, did you do that independent of Robert Stewart?
 5 A No.
 6 Q Were you with Robert Stewart in the police
 7 station when that happened?
 8 A No.
 9 Q So you did it independent of him?
 10 A Right.
 11 Q You weren't with him then.
 12 A I wasn't with him.
 13 MR. CRADDICK: Your Honor, I have no
 14 further -- I do have one more question.
 15 Q You were asked about a pending case you have.
 16 A Right.
 17 Q Have I given you any deal to testify here today?
 18 A No.
 19 Q Have I made you any promises?
 20 A No.
 21 Q Has anyone in my office made you any promises
 22 in exchange for your testimony?
 23 A No.
 24 Q Do you have a lawyer on that case?
 25 A Right.

3 Q Is the case still pending here?

4 A Yeah.

5 Q Do you expect to get anything from your
 6 testimony here today?

7 A No.

8 MR. CRADDICK: I have nothing further of the
 9 witness, Judge.

10 THE COURT: Ms. Crane?

11 MS. CRANE: I have no further questions at
 12 this time, but I would like to reserve the right to recall
 13 this witness.

14 THE COURT: All right. Mr. Shockley, you may
 15 step down, but you're not excused. You'll have to stay
 16 in touch with us, okay?

17 THE WITNESS: All right.

18 THE COURT: Ladies and gentlemen, we'll take
 19 a recess at this time.

20 Please don't discuss the case among
 21 yourselves or with others or form or express any
 22 opinions about it, and we'll be in recess for
 23 20 minutes. Leave your notebooks in your chairs.

24 (At this time, the Court declared a recess and
 25 the jury was duly admonished.)

357

1 The following proceedings were held in open
 2 Court within the presence and hearing of the jury:
 3 THE COURT: You may call your next witness,
 4 Mr. Craddick.
 5 MR. CRADDICK: The State calls Damon Stowers.
 6 (On
 7 DAMON STOWERS,
 8 having been first duly sworn by the Deputy Clerk, testified:
 9 DIRECT EXAMINATION
 10 BY MR. CRADDICK
 11 THE COURT: You may proceed.
 12 Q (By Mr. Craddick) Would you state your
 13 name for the Court and jury please?
 14 A Damon Stowers.
 15 Q Mr. Stowers, how old are you?
 16 A Twenty nine.
 17 Q And on June the 21st of the year 2002, where
 18 did you live?
 19 A The 5300 block of Arlington.
 20 Q Specifically, what address?
 21 A 5351.
 22 Q Now, I want to direct your attention to your
 23 direct left there. Do you see that diagram?
 24 A Yes, sir.
 25 Q Do you recognize those -- the lay-out of

358

1 houses as being the houses laid out in part of the
 2 block of the 5300 block of Arlington?

3 A Yes, sir.

4 Q Would you agree with the houses as they're
 5 laid out and the numbers attached to them, as being
 6 part of that block?

7 A Yes, sir.

8 Q Would you step down and point to your house
 9 on that diagram, if it's on the diagram?

10 A (Indicating).

11 Q And for the record, you pointed at 5351, is that
 12 correct?

13 A Yes, sir.

14 Q Please take your seat.

15 At that time of June of the year 2002, did you
 16 know a person named Freddie Chew?

17 A Yes, sir.

18 Q And did you know him to either stay or have a
 19 relative who lived across the street from your house?

20 A Yes, sir.

21 Q What was the number of that house, if you
 22 know?

23 A I believe it was 5342.

24 Q Okay. That's also on the diagram?

25 A Yes, sir.

A-169