STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

FILED
McLEAN AUG 13 2021 COUNTY
CIRCUIT CLERK

THE PEOPLE OF STATE OF ILLINOIS	)	
vs.	)	No. 1999-CF-1016
JAMES SNOW, DEFENDANT	)	

STATE'S RESPONSE TO DEFENDANT'S MOTION FOR DISCOVERY

NOW COMES the People of the State of Illinois by and through McLean County First Assistant State's Attorney Bradly Rigdon and requests that this Court deny the Defendant's Motion for Discovery (filed 08/03/2021), and in support of that request states as follows:

Procedural Posture

1. On January 16, 2001, a McLean County jury properly returned a verdict of guilty and the Defendant was convicted of the 1991 murder of Bill Little.
    a. During that trial, the jury heard testimony that the Defendant had admitted his involvement in the murder of Bill Little to more than a dozen individuals.
    b. During that trial, the jury also heard eyewitness identification testimony that the Defendant was fleeing from the scene of the murder moments after the gunshots were heard.
2. Since being convicted by the jury, the Defendant has sought review of his case numerous times. Between the trial-court level, the Fourth District, the Illinois

Supreme Court, Federal District Court, Federal Appellate Court, and the Unites States Supreme Court, no fewer than 25 judges have considered previous proceedings and the conviction has either been upheld, or *Certiorari* denied, at every level. *1999 CF 1016, McLean County* (denial of post-trial motion claiming ineffective assistance of counsel) April 2001; *People v. Snow*, No. 04-01-0435, 351 Ill. App. 3d 1188 (Aug. 20, 2004)(unpublished order under Supreme Court Rule 23); *People v. Snow*, 212 Ill. 2d 549 (2004)(denial of petition for leave to appeal); *People v. Snow*, No. 04-01-435 (April 21, 2011)(Judge Alesia McMillen dismissed defendant's post-conviction claims); *People v. Snow*, 2012 IL App (4th) 110415 (Jan. 11, 2012)(appellate court affirmed Judge McMillen); *People v. Snow*, 968 N.E. 2d 1071 (May 30, 2012) (another denial of petition for leave to appeal to the Supreme Court): *People v. Snow*, 99-CF-1016, (January, 2014)(trial court denies Snow's motion for leave to file a successive postconviction petition); *People v. Snow*, 2015 IL App (4th) 140721 (appellate court affirms denial of motion to file successive post-conviction petition); *People v. Snow*, 39 N.E. 3d 1009 (Sept. 30, 2015)(Supreme Court denies leave to appeal); *Snow v. Pfister*, 240 F. Supp. 3d 854 (federal trial court denies Snow's habeas corpus request); *Snow v. Pfister*, 880 F.3d 857 (Jan 25, 2018)(7th Cir. Affirms denial of habeas corpus request); *Snow v. Nicolson*, 138 S. Ct. 2637, 138 S. Ct. 2637 (June 11, 2018) (United States Supreme Court denies certiorari).

3. The Defendant's requests for discovery to support his motion under 725 ILCS 5/116-3 has been litigated over the past five years.

   a. On March 28, 2016, an order was entered that provided a mechanism by which Counsel for the Defendant could view and copy all color

photographs. This was allowed as discovery for the motion under 725 ILCS 5/116-3. Said order was filed on March 30, 2018.

b. That March 28, 2016 order also allowed for the issuance of subpoenas duces tecum to the Bloomington Police Department and the Illinois State Police for the limited purposes tied to the motion filed under 725 ILCS 5/116-3.

c. On October 3, 2016, an order was entered which allowed the State the opportunity to object to the disclosure of the materials received via subpoena from the Illinois State Police. Those materials have been tendered to the Defendant as discovery related to the motion under 725 ILCS 5/116-3. Said order was filed on October 6, 2016.

d. That order entered on October 3, 2016 (filed on October 6, 2016) also contained a statement by Judge Scott J. Butler that a large portion of the materials received in response to the subpoenas were outside of the scope of the March 28, 2016 order.

e. On March 22, 2018, Judge Butler entered an order denying the Defendant's request that the entirety of the subpoenaed materials be provided to counsel for the Defendant under a protective order.

4. The Defendant has renewed his requests that the State provide the entirety of the materials received from the Bloomington Police Department via the previously referenced subpoena duces tecum.

5. On July 14, 2021, the Court ordered that motions relating to discovery be submitted in writing so that the State would have the opportunity to respond and set a schedule for filings as well as a hearing for September 8, 2021.
6. On August 3, 2021, the Defendant filed a document entitled "Motion for Discovery".
    a. The State notes that while the document was not formally filed until August 3, 2021, the State was provided a timely copy of that Motion via email on the evening of July 30, 2021.

Previous Discovery and the Subpoena Duces Tecum Response

7. The discovery process in this case proceeded from its inception and has continued. During initial proceedings, the State tendered what were identified as 864 discovery exhibits items. In 2016, and as the response to a subpoena duces tecum, the Bloomington Police Department provided hard-copy documents and a CD with digitally scanned documents.
    a. There are approximately 100 pages of hard-copy documents.
    b. The CD contains multiple PDF files which total 7,704 pages of documents.
8. The Defendant relies upon the fact that there are 864 "discovery exhibits" but more than 7,000 pages as part of the subpoena return by the Bloomington Police Department as grounds for the allegation that an untold number of documents were not tendered in discovery. However, those numbers, by themselves, do not reveal the facts of the discovery and the subpoena return:

a. As an example, the first discovery filing by the State occurred on December 29, 1999. Within that filing, the State references the grand jury transcript as exhibits 365 (volume 1), 366 (volume 2), and 367 (volume 3).

   i. When combined, those three volumes of transcripts total 471 pages of documents that were tendered in discovery.

   ii. While there are 864 discovery exhibits identified, there were over 1,000 actual pages of documentation involved in the discovery tendered to the Defendant.

b. Additionally, the more than 7,000 pages of documentation provided by the Bloomington Police Department as part of the subpoena return contains consistently duplicative materials. After reviewing the Defendant's filing relating to discovery, the State performed a spot-check to see what sort of overlap occurs between the discovery exhibits and the materials in the subpoena return. Six pages of the discovery were randomly chosen and then compared to the digital materials provided in the subpoena return. The following is how many times those exact same documents appear within the subpoena return:

   i. Discovery exhibit 1 in in that subpoena return at least four times;

   ii. Discovery exhibit 201 is in that subpoena return at least eight times;

   iii. Discovery exhibit 337 is in that subpoena return at least four times;

   iv. Discovery exhibit 370 is in that subpoena return at least three times;

   v. Discovery exhibit 593 is in that subpoena return at least four times; and

   vi. Discovery exhibit 710 is in that subpoena return at least twice.

9. As can be seen even from a random sampling, the subpoena return regularly contains duplicates of the materials previously tendered in discovery.

Argument

10. The Defendant provides a generalized list of items that are within the subpoena duces tecum return but previously unknown to Petitioner's post-conviction counsel. The list is vague and does not provide enough information for the State to provide a meaningful response to the items mentioned. Many of the materials within the subpoena response have been tendered in discovery, many are duplicated within the subpoena response, and many are just not subject to the rules of discovery for one reason or another.
11. The manner of identification of those items in paragraph 17 does not provide enough detail for the items to be identified, does not provide enough information for a response, and does not provide enough information for the court to rule on the whether discovery is appropriate.
    a. The 7,704 pages of materials provided by the Bloomington Police Department are in eleven PDF files and contain varying numbers of pages.
    b. While Counsel has indicated specificity as to the contents of the documents themselves is not allowed, the State is not aware of any order of the Court that would prevent reference to the file name(s) and/or page number(s) that contain the documents that are alleged to 1) be discoverable, and 2) have not been previously tendered in discovery.

12. Supreme Court Rule 412 governs the disclosure of materials by the State during criminal proceedings. That rule, while broad, does have limitations on the materials that are subject to the discovery process. Unless there is more specificity as to what materials are being referenced by the Defendant's motion, the State cannot respond regarding those items and the Court cannot rule whether those materials are subject to discovery under the limited basis under 725 ILCS 5/116-3.

    a. An example of the issue relates to this is the fact that there are restrictions on some types of materials that are not subject to disclosure when it comes to documents such as LEADS (Illinois Law Enforcement Agencies Data System) information.

    b. The State makes specific reference to LEADs materials because item #6 in Paragraph 17 of the Motion for Discovery identifies "numerous LEADS sheets" as materials that are in the subpoena response but were not disclosed in discovery.

    c. Generally, access to the LEADS materials is governed by the Illinois Administrative Code and restricts access to those materials. Ill. Admin. Code tit. 20, § 1240.30. Such materials are not part of discovery materials as the disclosure of the materials to non-authorized parties would be a violation of that Code.

    d. Without identification of the pages that contain "numerous LEADS sheets", the State cannot identify whether those documents are protected from disclosure.

13. Limitations on the scope of discovery are appropriate in these proceedings because, aside from the Motion for Discovery, the only motion currently pending before court is one for testing pursuant to 725 ILCS 5/116-3. Other courts have addressed the scope of discovery to be afforded to defendants seeking such testing and have affirmed limitations.

    a. "The statute does not provide a general means to discover evidence but rather an avenue to test targeted items that have the potential to provide materially relevant evidence as to a defendant's claim of actual innocence. *People v. Barrow*, 2011 IL App (3d) 100086, ¶ 30, 954 N.E.2d 895, 905 (3rd Dist. 2011).

    b. The purpose of discovery in these types of motions has limited application because of the nature of the proceeding. if the defendant asserts that he is unable to plead and prove the proper chain of custody because the evidence at issue has been in the safekeeping of the State or the clerk of the circuit court, the trial court may allow limited discovery in the appropriate case. *People v. Henderson*, 343 Ill. App. 3d 1108, 1116, 799 N.E.2d 682, 690 (1st Dist. 2003), as modified on reh'g (Sept. 25, 2003).

14. The defendant cites to *People v. Johnson*, 205 ILL. 2d 381 (2002); *People v. Jakes* 2013 IL App (1st) 113057; and *People ex. Rel Daley v. Fitzgerald*, 123 Ill. 2d 175 (1988) for the general proposition that courts have the inherent discretion to grant discovery in post-conviction matters. Defendant fails to note that *Johnson*, 205 Ill. 2d at 384, Jakes, 2013 IL App (1st) 113057 at ¶ 2, and *Fitzgerald*, 123 Ill. 2d at 178, all

involve a defendant's initial and statutorily guaranteed post-conviction petition and not a defendant's third successive/subsequent post-conviction petition under 725 ILCS 5/122-1(f).

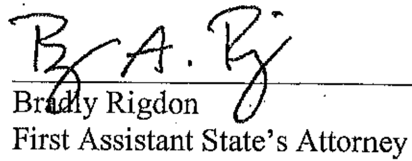
15. While the State is not asserting that the Court's inherent authority is somehow limited by the Post-Conviction Hearing Act's mandate that a defendant receive leave of court to file a subsequent post-conviction petition, it is at least reasonable that one seeking to invoke the equitable and inherent powers of this Court should be expected to inform the court that cases which they claim provide the authority for their request involve defendants that need not overcome the hurdle of leave of court before filing their post-conviction petition.

16. Not coincidently, there is an entire body of case law– including *Fitzgerald* – that stands for the proposition that trial court judges should be incredibly cautious when exercising their inherent authority to allow discovery in post-conviction matters, "Because post-conviction proceedings afford only limited review, and because there would exist in those proceedings a potential for abuse of the discovery process ***." *People ex rel. Daley v. Fitzgerald*, 123 Ill. 2d at 183-84; See also *People v. Fair*, 193 Ill. 2d 256, 264 (2000)("Circuit courts, however, must exercise this authority with caution because post-conviction proceedings afford only limited review of constitutional claims not presented at trial, and there is a potential for abuse of the discovery process in post-conviction proceedings.")

17. The State asserts that the Defendant's request for essentially unlimited discovery is exactly the sort of practice that should be limited because such requests result in the discovery process being abused over a course of years. Without even filing a motion

for leave of court to file a successive post-conviction petition under 725 ILCS 5/122-1(f), defendant is forever engaging in fishing expeditions.

WHEREFORE, the People of the State of Illinois respectfully request that this Court deny the Defendant's Motion for Discovery.



Bradly Rigdon
First Assistant State's Attorney

PROOF OF SERVICE

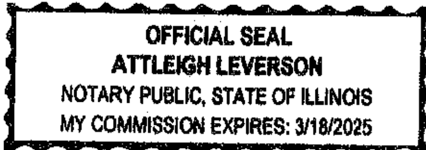
The undersigned certifies that a copy of the foregoing instrument was served upon the attorney's of record of all parties to the above cause by:

✓ 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 13 day of August, 2021.

____ Hand delivering a true and correct copy of the same on the ____ day of ______________, 2021.

✓ Emailing a true and correct copy of the same on the 13 day of August, 2021.

Subscribed to and sworn before me this 13th day of August, 2021.



Notary Public

OFFICIAL SEAL
ATTLEIGH LEVERSON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 3/18/2025