IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

DAVID WILSON, Petitioner, v. JOHN Q. HAMM, Commissioner, Respondent.	)))))))))	Case No. 1:19-CV-284-RAH-CSC DEATH PENALTY CASE

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO PETITIONER'S FIFTH MOTION FOR *BRADY* DISCOVERY

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PETITIONER'S REPLY

In the famous words of Claudius, the King of Denmark, in William Shakespeare's *Hamlet,* this case "smells to heaven." *Hamlet*, Act III, Scene III, line 36 [1603].

The lawyers for the State of Alabama in this case withheld the written confession of a co-defendant for nineteen years, from September 2, 2004, to June 28, 2023—a confession in which the co-defendant took responsibility for beating the victim to death with a baseball bat and disposing of the murder weapon and stolen property.

When the Attorney General was finally compelled by two court orders to produce the co-defendant's full confession, the letter revealed that the co-defendant also confessed to being involved in a second murder and to possessing and controlling the murder weapon, a .38 caliber revolver.

Following another court order, the Attorney General produced another written confession by the co-defendant to her involvement in the first murder and two police interrogations of the co-defendant from nineteen years ago in which she confessed to being involved in the second murder, to having control of the murder weapon, and to being deeply implicated in a violent drug trafficking ring.

Throughout all these nineteen years, the State's attorneys asserted that the co-defendant's written confession was authentic but not favorable to the defendant—

asserting this over and over, as officers of the court, all the way to the United States Supreme Court.

Then, after having been compelled to produce the co-defendant's confession, the Attorney General changed stories and, for the first time, now claims that the co-defendant's confession is a forgery of "questionable authorship." (Doc. 99, p. 13)

In his Response (Doc. 99), Respondent chastises Petitioner and reminds him of his professional responsibilities. Advocates are taught, of course, that the best defense is a good offense. But the stench in this case is overwhelming and the product of a deliberate *Brady* violation that has been festering for two decades. *Brady v. Maryland*, 373 U.S. 83 (1963). Given Respondent's production of additional *Brady* material on December 7, 2023, further discovery is in order. Pursuant to this Court's Order dated February 12, 2024 (Doc. 98), Petitioner David P. Wilson hereby submits his reply to Respondent's response (Doc. 99) to Petitioner's Fifth Motion for *Brady* Discovery (Corrected) (Doc. 100).

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Introduction

1. Following Respondent's production of additional *Brady* evidence on December 7, 2023, Petitioner filed a pleading with this Court requesting further discovery. (Doc. 89)

2. This Court properly construed Petitioner's request as a fifth motion for *Brady* discovery and scheduled briefing on the motion. (Doc. 94)

3. Respondent filed his "Response to Fifth Motion for Discovery" (Doc. 99). Under separate cover, Respondent notified Petitioner that he had interrogated Kittie Corley on May 2, 2023, prior to obtaining a sworn affidavit from her on June 29, 2023. Respondent asked Petitioner to withdraw suggestions to the contrary in Doc. 89.

4. Petitioner corrected his pleading, withdrew an incorrect assertion, and submitted his "Fifth Motion for *Brady* Discovery (Corrected)" (Doc. 100), which is the operative pleading on these submissions and replaces Doc. 89.

5. This filing is Petitioner's Reply to Respondent's Response (Doc. 99) to Petitioner's Fifth Motion (Doc. 100).

I. THE KITTIE CORLEY AFFIDAVIT CALLS FOR ADDITIONAL DISCOVERY OR SHOULD BE STRUCK FROM THE RECORD

6. In the spirit of courtesy that must guide this litigation, Petitioner would like to clarify that he is not presently accusing Respondent of suborning perjury. His contention, instead, is that Respondent filed an affidavit in federal court that is likely perjurious. Petitioner's argument is straightforward and can be reduced to a simple syllogism:

a. Respondent has always told this Court that he believes that Kittie Corley is the author of the Corley letter (Doc. 33 at p. 6; Doc. 37 at p. 6: "the State believed that Ms. Corley was its author").

b. The Alabama Attorney General repeatedly told the United States Supreme Court that Corley's authorship of the Corley letter is not in question (Doc. 76-35 at PDF 131, Bates 5990; Doc. 76-35 at PDF 133, Bates 5992: "the authorship of the letter was not in dispute").

c. The Alabama Attorney General just filed an affidavit from Kittie Corley in federal court in which Corley asserts that she is not the author of the Corley letter (Doc. 86-1); and

d. All of the State of Alabama's investigation and evidence establishes that Kittie Corley's affidavit is likely perjurious (Doc. 100, ¶ 3).

e. Therefore, the Alabama Attorney General filed evidence in federal court that is likely perjurious.

7. On the basis of this simple syllogism, Petitioner requests additional discovery to establish the truth of the matter. Is Kittie Corley lying in her June 29, 2023 affidavit? Did she write a letter on August 10, 2004 confessing to the murder for which Petitioner David Wilson was convicted or did she not? All that Petitioner has requested is the opportunity to conduct discovery to establish the truth or falsity of new facts that Respondent has now injected into this habeas corpus case.

A. The Court Should Grant Full Discovery or Strike the Corley Affidavit from the Federal Record.

8. In its latest filing, Respondent has already begun to change its position regarding the Corley letter, based on an affidavit that is likely perjurious.

9. In its responsive pleading, Doc. 99, Respondent has, for the first time, referred to the Corley letter as being of "questionable" authenticity: Respondent now refers to the Corley letter as "a letter of questionable authorship." (Doc. 99, p. 13)

10. This sleight of hand is precisely the kind of change in argument that this Court has condemned previously in this litigation. *See* (Doc. 79 at p. 6 and p. 6 n.2: "In general, '[a]n argument not made is waived[.]' *Cont'l Technical Servs., Inc. v. Rockwell Intern. Corp.*, 927 F.3d 1198, 1199 (11th Cir. 1991)").

11. There is, of course, no good reason why anyone would believe what Kittie Corley has to say about the Corley letter now. Corley has every reason to lie—now more so than ever, because she is about to appear before the Alabama Board of Pardons and Paroles. Corley becomes parole eligible as of January 1, 2025. (Doc. 89-1, p. 3) Of course she would now seek to deny her involvement in the C.J. Hatfield murder and minimize her involvement in the murder of Dewey Walker. To do otherwise might harm her chances at parole. As such, the Corley affidavit is not a trustworthy document. In any event, the State of Alabama always believed, maintained, and stated to the state and federal courts that Kittie Corley wrote the letter.

12. Now that Respondent has interjected the authenticity of the letter into these habeas proceedings, the Court should allow Petitioner discovery to prove that the Corley affidavit is perjurious or, alternatively, strike the affidavit from the record. (*see infra*, ¶ 21).

B. Respondent Has Opened an Important Factual Dispute.

13. Respondent is correct when he writes that "the *authorship* of the Corley letter was not previously questioned by the State, but the letter's *reliability* […] has always been questioned." (Doc. 99, pp. 2-3) The distinction between authenticity and reliability is important to recognize, but it cuts in favor of Petitioner's contention

that the letter is crucial *Brady* material, and that its authenticity should be thoroughly explored through additional discovery.

14. The Alabama Attorney General has always maintained that the letter was *authentic* but not *reliable* because Corley had a motive to lie. The Attorney General wrote that the Corley letter was not *reliable* because she was simply trying to get an attorney. *See* Fed Rec. Doc 76-30, Bates 5130, Motions Hearing on Petitioner's Rule 32 Petition on June 21, 2016 (Assistant Attorney General Richard Anderson states: "It's just an unsworn document that was produced at the behest of another inmate. It doesn't have any indicia for reliability. It is—there is an allegation that it was authenticated as something written by Captain (sic) Corley, but there is no—no indicia that it is reliable. I mean, even if it's authentic, there is no indicia that it is reliable, because it was produced in the hopes of obtaining an attorney").

15. But this question of reliability cuts in Petitioner's favor. Kittie Corley was *more likely* to have been telling the truth to a potential attorney than to the police officers interrogating her. If there are discrepancies between her police interrogation and her attorney letter, it is likely because she was holding back with the police but being forthright with her potential attorney (who would have had attorney-client privilege). So, Respondent's argument weighs in favor of the materiality of the Corley letter for purposes of *Brady* analysis and underscores the importance of this matter. And incidentally, we now know, from the back side of the Corley letter, that

the Corley letter is reliable. It corresponds, along myriad dimensions, to what Kittie Corley told the police in the two police interrogations from 2005 just produced by Respondent. *See* Table of Correspondence in Doc. 100, ¶ 50.

C. Petitioner Should be Allowed to Depose Kittie Corley.

16. Respondent writes that Petitioner has "failed" to perform the sort of inquiry it should have, namely "interviewing Catherine Corley regarding the letter." (Doc. 99, p. 2)

17. But Respondent knows full well that Corley will *not* speak to Petitioner's counsel. In fact, Corley specifically told the Assistant Attorney General, in no uncertain terms, that she would not speak with defense counsel. In Shakespearean terms, actually: Corley told to the Assistant Attorney General on May 2, 2023, that she had already told Petitioner's counsel "to go jump off a high cliff." (Transcript of May 2, 2023, interrogation of Kittie Corley by Assistant Attorney General)

18. Respondent tells this Court, regarding the Assistant Attorney General's interrogation of Kittie Corley, which led to her affidavit denying authorship of the Corley letter, that: "What *was* ongoing was that, in the course of this litigation, undersigned counsel was performing precisely the sort of inquiry that Wilson's habeas counsel has failed to do: interviewing Catherine Corley regarding the letter that purports to describe the killing of Dewey Walker." (Doc. 99, p. 2) That phrasing depicts the interview as altogether routine and dutifully responsible. But it raises a

troubling question: Postconviction proceedings in state and federal courts in this case have been underway since December 11, 2015, and the nondisclosure of the Corley letter has been an issue since that date. Why then are the State's lawyers suddenly conducting an initial inquiry with Kittie Corley on May 2, 2023, into the authenticity of the letter as a confession to the killing of Dewey Walker? And why did they only conduct this routine due diligence *after* they were compelled to turn over the Corley letter to Petitioner?

19. Such an inquiry does now need to be conducted. But the Assistant Attorney General's interview and Corley's ensuing affidavit cannot be the end of it. For this reason, Petitioner needs to depose Kittie Corley, as well as the other witnesses connected to the Corley letter (*see infra*, ¶ 22).

D. Petitioner Is Now Entitled to Depose Witnesses Regarding the Authenticity of the Corley Letter.

20. The Attorney General now argues, on the basis of the Corley affidavit, that the Corley letter is "a letter of questionable authorship." (Doc. 99, p. 13). Unless the Corley affidavit is struck, the Court should allow Petitioner to conduct the kind of thorough-going inquiry into the letter's provenance that will support a fully informed determination of the answer to the authorship question.

21. This new factual matter had never been raised before in these proceedings, as the Attorney General concedes. (Doc. 99, pp. 2-3: "[T]he *authorship* of the Corley

letter was not previously questioned by the State.") And the Attorney General had previously asserted to this Court that there were no factual disputes, no need for evidentiary development, and no need for witnesses or an evidentiary hearing. In its Answer to the Petition, Respondent asserted that, regarding the Corley letter, "the Court of Criminal Appeals made findings of fact. Pursuant to 28 U.S.C. § 2254(e)(1), these fact findings are presumed correct. Wilson is not entitled to an evidentiary hearing on this claim." (Doc. 56, p. 14)

22. Now that Respondent has created a dispute of fact, Petitioner is entitled to depose agents of the state and other who have material evidence about the writing of the Corley letter, including Tony Luker, Gary Maxwell, Douglas Valeska, Richard D. Anderson, Allen Hendrickson, Tommy Merritt, Joan Vroblick, Troy Silva, Nick Check, and Kaylia Lane. Petitioner has already filed notices of depositions. (Doc. 89-21)

23. On May 2, 2023, Assistant Attorney General Richard D. Anderson and Special Agent Vicki Wilson with the Alabama Attorney General's Office interrogated Kittie Corley, who is detained at the Birmingham Women's Community Based Correctional Facility in Birmingham, Alabama. The interrogation was tape recorded. It was transcribed on May 10, 2023. The transcript was provided to Petitioner on February 22, 2024 (henceforth "Interrogation Transcript"). During the recorded interrogation, the Assistant Attorney General makes reference to two prior

conversations that were not captured by the tape recording. First, apparently referencing a conversation about what Corley has done to rehabilitate herself, the Assistant Attorney General says "I respect what, what I, you've told us about what you're trying to do to improve yourself. I think that's great. I wish you the best in that." (Interrogation Transcript, p. 18) At no time during the taped interrogation does Kittie Corley tell her two interrogators what she has done to improve herself. That line of questioning, it seems, may have been related to Corley's upcoming parole hearing. Second, at the top of the interrogation, the Assistant Attorney General states "Ms. Corley, uh, I want to, so, I do want to take you back 19 years ago, as you said." (Interrogation Transcript, p. 2) Corley has said no such thing in the recorded interview before that point.

24. Petitioner should be allowed discovery regarding the two conversations that were not captured by the tape recording. Petitioner will need to have interrogatories answered by Respondent and an opportunity to depose both Assistant Attorney General Richard D. Anderson and Special Agent Vicki Wilson. Petitioner has attached a new set of interrogatories for Respondent (Appendix G) and a notice of deposition for Special Agent Vicki Wilson (Appendix H). A notice of deposition for Assistant Attorney General Richard D. Anderson has already been filed. (Doc. 89-21)

25. Rule 6 of the Rules Governing Section 2254 Cases in the United States District Courts provides for discovery under these circumstances. *See Bracy v. Gramley*, 520 U.S. 899 (1997); *Bowers v. U.S. Parole Commn., Warden*, 760 F.3d 1177 (11th Cir. 2014). Where a Petitioner has shown good cause to conduct the requested discovery, it is incumbent on the District Court "to provide the necessary facilities and procedures for an adequate inquiry." *Bracy*, 520 U.S. at 909.

E. In the Alternative, this Court Should Strike the Corley Affidavit.

26. Alternatively, this Court could simply strike the Corley affidavit as likely perjurious under the sham affidavit rule first set out by the Second Circuit in *Perma Research & Dev. Co. v. Singer Co.*, 410 F.2d 572 (2nd Cir. 1969) and adopted in the Eleventh Circuit in *Van T. Junkins & Assoc., Inc. v. U.S. Industries, Inc.*, 736 F.2d 656, 657 (11th Cir. 1984). The sham affidavit rule is the proposition that a federal court may strike an affidavit as a matter of law when the court determines that it is a sham intended to derail a probable judgment. The rule was developed to prevent litigants from attempting to avoid judgment by manufacturing an issue of fact and submitting an affidavit that contradicts earlier positions without an adequate explanation for the discrepancy or contradiction. Thus the rule is made to order for the present case. In *Van T. Junkins & Assoc., Inc. v. U.S. Industries, Inc.*, for example, the Eleventh Circuit upheld the District Court's determination that the affidavit entered there was a sham and should be struck. 736 F.2d at 658-59. The

Corley affidavit should also be struck under Fed. R. Civ. Pro. 26 and 37 because Respondent stated in its Answer that there is no need for an evidentiary hearing in this case and thus no need for witnesses (Doc. 56, p. 14), and has not notified Petitioner of any intention of calling Kittie Corley as a witness at an evidentiary hearing. *See Pete's Towing Co. v. City of Tampa, Fla.,* 378 F. App'x 917 (11th Cir. 2010). The Corley affidavit should have been produced to Petitioner by email, without docketing it on the federal record, as Respondent did with all the other documents he produced to Petitioner on December 7, 2023 (*see* Doc. 100, ¶ 6).

II. NEW EVIDENCE RELEVANT TO REQUEST FOR DISCOVERY

27. Unbeknownst to Petitioner—who did not even know until this past year that Kittie Corley confessed to being involved in a second murder—the murder of C.J. Hatfield is a sensational case that has drawn significant media attention and investigative journalism. *Slate* magazine published a lengthy, thirty-two page, long-form, investigative reporting article about the case. *See* Appendix A (*Slate* article on C.J. Hatfield Murder, dated Feb. 7, 2017) Since 2016, investigative journalists and documentary filmmakers have been scouring every inch of that case and unearthing new details about the murder.

28. One of the reasons that the Hatfield murder is such a sensational case is that six suspects have been convicted and punished for the murder under very different

prosecutorial theories of who did what, where, and when. The only known and consistent thread throughout is that the murder of C.J. Hatfield was related to ongoing drug trafficking activities. On one of the prosecutor's theories, C.J. Hatfield was shot dead in the woods by James Stuckey, Scott "Bam Bam" Mathis, and Mark Hammond, and there are multiple different stories about who was present. On another of the prosecutor's theories, C.J. Hatfield was shot dead at his girlfriend Sarah Drescher's house by Bam Bam, Hammond, and Stuckey, with James Bailey and Drescher present; then Hatfield's dead body was transported by Bam Bam and Hammond in a toolbox in the back of Hammond's truck and dumped in the woods. *See* Appendices A and B (document titled "Work Product | James William Bailey"). Throughout all this, Kittie Corley apparently had intimate relations with two of the drug ring's leaders, had possession and control of the murder weapon, knew every detail about the murder and its planning, agreed to be a false alibi for Hammond, at one point confessed to being present at the shooting death, at another point claimed to have driven at least one of the alleged murderers to the crime scene, and more.

29. Given Respondent's production of new evidence relevant to the Hatfield murder, documentary filmmakers reached out to undersigned counsel and, two weeks ago, shared documents with counsel. Those documents include, first, a summary of law enforcement's conclusions about the various suspects in the Hatfield murder. The document is titled "Work Product | James William Bailey" at

the top and is dated 2005. *See* Appendix B. That document includes the following about Kittie Corley:

a. "Catherine Corley said she had a strongbox that Scott Mathis had her store a handgun in. The box was in Hammond's possession some of the time. She said that she (sic) took care of CJ with his gift and she knew that gift to be a 38 revolver that an unknown person gave him. Corley said that Hammond wanted her to say that he was with her at her place at the time the murder took place." (Page 2)

b. "Parmer stated that he knows that CJ was shot multiple times with what he believed to be different guns. He stated that the shots sounded differently. Parmer stated that Stuckey was there on his truck. Mathis was there on his Bronco. Parmer stated that a friend named Corley took him there and dropped him off. He stated that CJ was transported from the place where he was shot to the place where he was found in a toolbox on the back of Hammond's truck. Parmer stated that a necklace and ring were removed from CJ's body and the jewelry was given to Sara." (Page 3)

c. "Catherine Corley said she had a strongbox that Scott Mathis had her store a handgun in. The box was in Mathis some of the time and in Hammond's possession some of the time. She said that Mathis said he

took care of CJ with his gift, and she knew that gift to be a 38 revolver that an unknown person gave him. Corley said she saw Mathis put shorts and a button down shirt which he said belonged to Mark Hammond, along with clothing she knew belonged to Mathis, in a trash bag for disposal on the same day that they also asked for a water hose to wash out the truck. This happened at the place where she was staying in Dothan. It was the same day that he said he took care of CJ with his gift. This is believed to be Friday March 12, 2004." (Page 5)

30. There is, second, another document that represents a police summary of the evidence and investigation (two partial versions of which are attached to the previous document under the date of March 31, 2005 and April 4, 2005). *See* Appendix C (Document titled "Final Summary" and dated April 4, 2005). That document includes the following regarding Kittie Corley:

a. "Catherine Corley, former girlfriend of Mathis, was interviewed at the Houston County Jail. Corley said that Hammond told her that he had shot Hatfield. She said that Hammond told her that Stuckey and Hammond were together before Hatfield was shot and that Hatfield was with Stuckey in Stuckey's truck. Hammond and Stuckey each told Corley that they urinated at the scene were (sic) Hatfield was found." (Page 6)

31. There is, third, another document that represents a police transcription of Kittie Corley's police interrogation dated January 29, 2005. *See* Appendix D (Transcript of Kittie Corley Interrogation)

32. There is, fourth, a Henry County Sheriff's Department Property/Evidence Sheet from approximately March 21, 2005, that refers to a "Kathy Corely (sic) Statement," alongside statements of John Parmer, James Bailey, Mark Hammond, and other suspects. *See* Appendix E (Police Evidence Sheet).

33. There is, fifth, a transcript of a video recording of an interview by a documentary filmmaker with one of the suspects in the Hatfield murder who, when asked about Catherine Corley, responds on camera: "Catherine Corley, they called her Kitty. Yeah, that's a loco psycho chick that actually killed someone herself." *See* Appendix F (redacted transcript of video footage by documentary filmmaker) It is likely that this refers to the killing of Dewey Walker, although it is possible that this may refer to another murder.

34. Kittie Corley was evidently one of the persons of interest in the Hatfield murder. At the trial of James Bailey, the state trial judge asks potential jurors during jury voir dire whether they are related by blood or by marriage to, or knew, Catherine Corley. *See* Appendix G (Transcript of voir dire, November 18, 2008, p. 15).

35. These new pieces of evidence are relevant to Petitioner's request for additional discovery, as explained in the following section.

III. RESPONDENT HAS NOT ADDRESSED THE SPECIFIC REQUESTS FOR DISCOVERY MADE IN THE FIFTH MOTION FOR DISCOVERY

36. In the Response, Respondent makes general objections to Petitioner's fifth request for *Brady* discovery but does not address in any way the specifics of the following matters:

37. First, on December 7, 2023, Respondent produced the audio recording of the police interrogation of Kittie Corley dated January 29, 2005 (Doc. 89-8 and 89-9); however, Respondent failed to produce the police transcription. Respondent stated that "No transcriptions of those recordings exist in the materials reviewed." (Doc. 86, p. 4). Petitioner has now located a copy of the police transcription from among a documentary filmmaker's files (*see* Appendix D.) Petitioner requests that Respondent turn over an authenticated copy of the transcription for purposes of maintaining a proper chain of custody.

38. Second, Petitioner is entitled under the Court's orders on November 3, 2023 and November 17, 2023 (Docs. 83 and 85) to the official police transcription of the Corley interrogation of March 24, 2005, which has not been turned over or discovered at this point.

39. Third, the March 24, 2005 interrogation of Kittie Corley suggests there were other interrogations *after* the January 29, 2005, interrogation but *before* the March

24, 2005 interrogation. *See* Doc. 100, ¶ 88-93. Respondent has not addressed that request. Petitioner requests those interrogations as well.

40. Fourth, Petitioner is entitled to any *Brady* evidence in the possession of the Alabama Bureau of Investigations. *See* Doc. 100, ¶ 94. An agent of the Alabama Bureau of Investigations, Tommy Merritt, was present and actively interrogated Kittie Corley during the March interrogation. There is no indication in the Attorney General's Responses (Docs. 86 and 99) that he searched the ABI files. Petitioner would request access to those ABI law enforcement records as well.

41. Fifth, regarding the "Dearest David" letter, the Attorney General only produced two (2) pages of a longer letter. It is clear from the letter (Doc. 89-12 and 89-13) that there are likely more pages. There is no closing. There is no signature. Evidently, there are one or more pages missing. Petitioner is entitled to receive the rest of the "Dearest David" letter.

42. Sixth, Petitioner is entitled to full access to all the other letters that were in the stash of Corley letters (referenced in Doc. 86 at ¶ 16) that the USPS handwriting and fingerprint experts consulted when they rendered their expert opinion that the original Corley letter (both sides) was indeed written by Kittie Corley. Petitioner requested production of the entire stash of letters. Respondent has not addressed this specific request. Production is necessary to make proper handwriting comparisons if necessary.

43. Seventh, Petitioner had requested all law enforcement reports that mention Kittie Corley. Petitioner stated in his Fifth Motion that Respondent was improperly shielding a number of *Brady*-discoverable law enforcement reports as "attorney work product." (Doc. 100, ¶ 104) Respondent had claimed that "None of these memoranda contained any material that would be responsive to Wilson's other requests." (Doc. 86, pp. 4-5, ¶ 9) Respondent does not address this specific request in the Response (Doc. 99). Petitioner has now independently located two of those law enforcement reports in a documentary filmmaker's files (attached as Appendices B and C). Those reports belie Respondent's claim that the reports are not relevant or favorable to Petitioner. *See* ¶¶ 29 and 30 *supra*. Those law enforcement reports should have been turned over. Respondent admits that there are "several" such typed memoranda (Doc. 86, p. 4-5), so there may be more. Petitioner requests all such memoranda. They are not covered by a state law work-product rule, and such a rule would not shield them from *Brady*'s disclosure obligations anyway. *See*, *e.g.*, *Fontenot v. Crow*, 4 F.4th 982, 1063 (10th Cir. 2021). As evidenced from Appendices B and C, the law enforcement reports in this case are "factual work product," not "opinion work product." It is well established that "factual work product" rules do not shield against *Brady* disclosure. *See Castleberry v. Crisp,* 414 F. Supp. 945, 953 (N.D. Okla. 1976); *United States v. Wirth*, 2012 U.S. Dist. LEXIS 47360, *8 (D. Minn. 2012); *Truman v. City of Orem*, 362 F. Supp. 3d 1121, 1128

(D. Utah 2019). Even "opinion work product" would need to be produced under the exceptional circumstances of this case and the nineteen-year delay in producing this evidence. *See Williamson v. Moore*, 221 F.3d 1177, 1182 (11th Cir. 2000) ("While opinion work product enjoys almost absolute immunity, extraordinary circumstances may exist that justify a departure from this protection.") Accordingly, any and all law enforcement memoranda that reference Kittie Corley should be produced to Petitioner.

44. Eighth, given the procedural history in this case (*see* Doc. 100, ¶¶ 9 through 39), it is clear that Respondent should not be trusted to determine whether evidence in its possession is favorable to Petitioner. *See* Doc. 79 at p. 14. Accordingly, this Court should allow Petitioner full access to all the law enforcement records in the Walker and Hatfield murders. Access to and review of law enforcement files are measures that a federal court can order under Rule 6 of the Rules Governing Section 2254 Cases in the United States District Courts. *See, e.g.*, *Lewis v. Comm'r of Corr.*, 2013 U.S. Dist. LEXIS 49155, *6-7 (D. Conn. 2013) (HAIGHT, Charles S. Jr., Judge) (referencing open file discovery).

45. Ninth, Petitioner requests that the Court order full compliance with this Court's Order dated November 3, 2023, that the Attorney General "certify in his response that no covered material exists." (Doc. 83) Petitioner has raised a number

of ways in which Respondent has not complied with this certification obligation. (Doc. 100, ¶ 110-124).

IV. THE PARTIES AND THIS COURT ARE NOT AT THE PROPER STAGE OF THESE PROCEEDINGS TO ADDRESS CAUSE AND PREJUDICE, OR MATERIALITY, OR ADMISSIBILITY REGARDING THE CORLEY LETTER.

46. In the Response, Respondent spends many pages arguing procedural defenses, the merits of the *Brady* claim, and the admissibility of the Corley letter (Doc. 99, p. 7-20). However, the parties are not at that stage of the litigation yet. Respondent is putting the cart before the horse.

47. Petitioner will fully brief these matters after discovery is complete and he has had an opportunity to amend his petition. Now, however, is not the time to do this.

48. To begin with, the parties have not even begun general discovery on Petitioner's other claims, including ineffective assistance of counsel, the *Batson* violation, and the other counts of the habeas corpus petition. These ongoing proceedings are merely collateral to the initial production of the Corley letter, which should have been turned over back in 2004, or in November 2019 when undersigned counsel filed his original notice of appearance asking specifically for the Corley letter as a condition to accept appointment in this case. (Doc. 29) But there are other areas that call for discovery. Among other things, Petitioner has obtained expert

funds on an *ex parte* basis on other aspects of the case, which will call for additional discovery. This Court has not yet entered a general discovery scheduling order on the other claims in the petition, or alternatively scheduled briefing on the right to general discovery.

49. After general discovery, Petitioner will amend his petition and seek leave for an evidentiary hearing. It is only then that Petitioner will be able to fully brief the merits of the petition, including the *Brady* claim. It is far too early to address these questions of procedural default, materiality, and admissibility of the Corley letter.

50. Respondent also argues that the voluminous exculpatory evidence that the Attorney General turned over on December 7, 2023—including the "Dearest David" letter (Doc. 89-12 and 89-13), the police interrogation of Kittie Corley dated January 29, 2005 (Doc. 89-8 and 89-9), the police interrogation of Kittie Corley dated March 24, 2005 (Doc. 89-10 and 89-11), and the police interview memorandum of Joan Vroblick (Doc. 89-14 and 89-15)—have not yet been exhausted in state court. Again, addressing issues of exhaustion is premature at this time. For now, it is enough to say that having been disclosed, they may be considered as bearing on what materials still remain undisclosed, and Petitioner's need for the latter materials.

51. For instance, the front and back of the Corley letter are the first and only evidence disclosed to Petitioner by the state from which Petitioner learned about Kittie Corley's involvement in a second murder. The first line of the Corley letter,

where Corley writes "My name is Catherine Nicole Corley & I am involved in 2 murders," is the first Petitioner ever heard of a second murder. (Doc. 89-3, p. 3) That information has now led to the disclosure of considerable additional, previously unrevealed evidence. The "unexhausted" documents may be similarly considered by this Court insofar as they point to the existence of additional items that are proper subjects for discovery.

V. OTHER MISDIRECTION IN RESPONDENT'S RESPONSE

52. Although it is not time for Petitioner to argue the merits of the *Brady* violation, Petitioner must correct certain misleading arguments in the Response.

53. At page 10 of its Response, Respondent is changing the state's theory of the case against Petitioner. Respondent writes: "the victim's other blunt force injuries came *before* the fatal strangulation, a finding that would discredit any theory that Ms. Corley caused Mr. Walker's death alone." (Doc. 99, p. 10) The temporal sequencing and the reference to "*fatal* strangulation" are wrong and they directly contradict District Attorney Douglas Valeska's theory at trial.

54. At trial, Valeska did everything in his power to convince the jury that Mr. Walker died as a result of the blunt force trauma of the battery, rather than of the strangulation. Valeska was trying to get the jury to return a finding of "heinous, atrocious, and cruel" aggravation at the penalty phase. As a result, he did not want

it to be the case that Mr. Walker died quickly from suffocation. He did everything possible to lead the pathologist to say that Mr. Walker was *not* killed as a result of the neck injuries. Valeska had the pathologist specifically disclaim any such "fatal strangulation," because Mr. Valeska's theory at trial was that the murder involved long drawn-out torture:

> Q: And so, in other words, if I'm wrong—and correct me, or I apologize—*those marks alone* [the ligature marks from strangulation]—because you found other injuries and contusions and bruises to his body—*didn't just cause his death*, because there were so many others in your opinion?
>
> A. They could very well have by themselves. Did they? They certainly contributed in my opinion.
>
> Q. And I apologize. The question I should have asked you is, then, all the other injuries—*if he received the ligature marks and they caused the death, all the other injuries would have been after he was dead, postmortem. That didn't happen*. He was still alive on all of them. Correct?
>
> A. *Yes, he was.*
>
> Q. Okay. And I apologize if I asked—but that's what I wanted get you to ascertain to the jury.

See C-515, emphasis added; Doc. 76-9 at PDF 61-62, Bates 1668-69).

55. And then during closing argument, Mr. Valeska re-emphasized that the cause of death was the multiple blows to Mr. Walker's head, and *not asphyxiation*, stating:

> He took that cord and *put it on a 64-year-old man's neck loosely*—and I submit you draw inferences—drug him around his own house, telling him, you better tell me where the money

> is. When you won't tell me, he took that bat and bashed him a couple of times…
>
> …That blow to the back of the head… That was the last wound he got."

Tr. R-609-10; Doc. 76-9 at PDF 155, Bates 1762 (emphasis added).

56. During that guilt-phase closing argument, Valeska continuously attacked Mr. Wilson's statement to the police that he did not mean to hit Mr. Walker in the head, arguing that the number of injuries refuted his statement:

> Oh, excuse me. From the statement, Mr. Wilson, you said you hit him accidentally. Accidentally. What part of your body tells you to take this bat and swing it and hit somebody? It's the brain. The brain tells the body – it runs down through the nerves and the hands and tells you to swing that bat.
>
> Accidentally. Accidentally.
>
> My goodness, good people, how many wounds, injuries, contusions, fractures – can you count to 114? Sure you can. 114 separate contusions, bruises, lacerations, tears on the body of Dewey Walker. Don't count the ribs.
>
> Don't count the skull. Don't count other things. Just count 114. Go back there and look at the clock and see how quickly you can do this 114 times.

See TR. 606-7; Doc. 76-9 at PDF 152-153, Bates 1759-1760) Valeska repeated this theme throughout. *See*, *e.g.*, TR. 609-10, 612, 623; Doc. 76-9 at PDF 155-156, 158, 169, Bates 1762-1763, 1765, 1776.

57. This point was reiterated at the penalty phase, in which the State sought application of the "heinous, atrocious, and cruel" ("HAC") aggravating

circumstance. The prosecutor re-emphasized the state's theory of the case that the blunt force trauma was all inflicted by Mr. Wilson as proof of the HAC aggravator:

> You heard Dr. Enstice describe to you the number of injuries that the victim in this case suffered through, 114, I believe, is what she said, different injuries . . .
>
> I don't think that any of you, when you see the pictures and after you have heard the testimony from the doctor, will believe that this was not especially heinous, atrocious and cruel.

TR. 764-65; Doc. 76-10 at PDF 110-111, Bates 1919-1920.

58. And again, at the sentencing hearing before the judge, the number of injuries was given as a justification for a sentence of death. (Sent. R. 5-6, 13-14; Doc. 76-10 at PDF 176-177, Bates 1985-1986)

59. Respondent is misdirecting the Court by referring to "fatal strangulation." Respondent is conflating the pathologist's testimony as to what *could have happened* with what the pathologist actually stated *did happen*. In fact, the pathologist stated precisely the *opposite* of what Respondent now claims: the other injuries came *after* the neck injuries, and Mr. Walker was alive for all the subsequent injuries.

60. Finally, Respondent is also misdirecting this Court when Respondent argues that Sergeant Luker's direct examination at trial did not dwell on Luker's conversation with Kittie Corley sufficiently to open the door to cross examination on what Corley said to Luker. (Doc. 99, p. 12) This contention ignores the reality that the line which the prosecutor's direct examination took is a standard prosecution

device for suggesting to the jury that a hearsay declarant alerted the authorities to the defendant as the perpetrator of a crime under investigation. *See, e.g., United States v. Kizzee*, 877 F.3d 650, 655, 659 (5th Cir. 2017); *United States v. Hamann*, 33 F.4th 759, 763 (5th Cir. 2022) ("In the last fifteen years, we have vacated at least six convictions and affirmed at least two writs of habeas corpus for kindred reasons.")

Conclusion

For the foregoing reasons, and pursuant to the authority vested in this Court by Rule 6 of the Rules Governing Section 2254 Cases in the United States District Courts and *Bracy v. Gramley*, 520 U.S. 899 (1997), Petitioner respectfully requests that the Court order the following discovery:

1. Production of the official police transcripts of the two police interrogations of Kittie Corley dated January 29, 2005 and March 24, 2005.
2. Production of all other police interrogations of Kittie Corley that were conducted between January 29, 2005 and March 24, 2005; and any other police interrogations, statements, writings, letters, or any form of communication of Kittie Corley before or after those dates.
3. Production of all the letters and writings that Sgt. Luker seized from Corley's jail cell and any and all of her other correspondence, including, but not limited

to the full "Dearest David" letter, "1 folder containing assorted hand written papers" and "1 writing pad with handwritten letters" (listed as #1 and #1A), "1 White inmate request form" (listed as #2), "1 yellow inmate request form dated 9/06/04" (listed as #3), "1 White inmate request form dated 9/23/04" (listed as #4), "1 Notice of appeal (Houston Co. Jail Form)" (listed as #5), "1 Brown cardboard folded [sic] containing assorted hand written papers" (listed as #6), and "1 Hand written letter to Travis from Nicole" (listed as #7). (Doc. 76-24 at PDF 16, Bates 3857)

4. Production of any and all police memoranda in law enforcement files that mention Kittie Corley (using any of her names, nicknames, or aliases), including but not limited to the "several" memoranda contained in the Henry County District Attorney's file [...] containing summaries of various recorded statements" (Doc. 86 at p. 5) and including the originals of Appendices B and C.

5. Production of any documents or materials of any kind whatsoever in the possession of any state agency responsible for law enforcement or prosecution that mention Kittie Corley (using any of her names, nicknames, or aliases) in the possession of the law enforcement records of the Alabama Bureau of Investigations.

6. Permission to file the attached interrogatories to the Alabama Attorney General (*see* Appendix H).
7. Permission to depose Kittie Corley (*see* Doc. 89-21 for all deposition notices except for Vicki Wilson).
8. Permission to depose Tony Luker.
9. Permission to depose Gary Maxwell.
10. Permission to depose Douglas Valeska.
11. Permission to depose Richard D. Anderson.
12. Permission to depose Allen Hendrickson.
13. Permission to depose Tommy Merritt.
14. Permission to depose Joan Vroblick.
15. Permission to depose Troy Silva.
16. Permission to depose Nick Check.
17. Permission to depose Kaylia Lane.
18. Permission to depose Vicki Wilson (Appendix I).
19. Access to review all law enforcement records related to the murders of Mr. Dewey Walker and C.J. Hatfield, in order for Petitioner to conduct his own review of the records, given Respondent's abysmal track record on the law of *Brady* disclosures; and

20. Full and complete compliance, through a notice of compliance, with this Court's Order dated November 3, 2023. (Doc. 83)

Further, pursuant to Rule 7 of the Rules Governing Section 2254 Cases in the United States District Courts, Petitioner renews his request that the Court expand the federal record to include all of the new material and information that Respondent produced to Petitioner but did not file with the Court, augmented by the newly discovered evidence, including the following documents:

1. Audio recording of the January 29, 2005 interrogation of Kittie Corley (Doc. 89-8, conventionally filed with the Court);
2. Certified Court Reporter Transcription of the Audio recording of the January 29, 2005 interrogation of Kittie Corley (Doc. 89-9);
3. Audio recording of the March 24, 2005 interrogation of Kittie Corley (Doc. 89-10, conventionally filed with the Court);
4. Certified Court Reporter Transcription of the Audio recording of the March 24, 2005 interrogation of Kittie Corley (Doc. 89-11);
5. Corley's "Dearest David" letter (Doc. 89-12);
6. Certified Court Reporter Transcription of Corley's "Dearest David" letter (Doc. 89-13);
7. Police interview worksheet of the Joan Vroblick interrogation (Doc. 89-14);

8. Certified Court Reporter Transcription of the police interview worksheet of the Joan Vroblick interrogation (Doc. 89-15);
9. Front side of the Corley letter (Doc. 89-2);
10. Certified Court Reporter Transcription of the front side of the Corley letter (Doc. 89-3).
11. Back side of the Corley letter (Doc. 89-4);
12. Certified Court Reporter Transcription of the back side of the Corley letter (Doc. 89-5);
13. Law Enforcement "Work Product | James William Bailey" Summary of Investigation into Murder of C.J. Hatfield (2005) (Appendix B);
14. Law Enforcement "Final Summary" of Investigation into Murder of C.J. Hatfield (April 4, 2005) (Appendix C);
15. Official police transcription of Kittie Corley's police interrogation dated January 29, 2005 (Appendix D).

Dated this 14th day of March 2024

Respectfully submitted,

BERNARD E. HARCOURT

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List of Appendices

A. *Slate* article on C.J. Hatfield Murder

B. Law Enforcement "Work Product | James William Bailey" Summary of Investigation into Murder of C.J. Hatfield (2005)

C. Law Enforcement "Final Summary" of Investigation into Murder of C.J. Hatfield (April 4, 2005)

D. Official police transcription of Kittie Corley's police interrogation dated January 29, 2005

E. Henry County Sheriff's Department Property/Evidence Sheet from approximately March 21, 2005

F. Redacted transcript of video footage in which Hatfield suspect calls Kittie Corley a "loco psycho chick that actually killed someone herself."

G. Transcript of voir dire at James Bailey trial, Case No. CC-05-380, November 18, 2008, p. 15

H. Petitioner David Wilson's First Set of Interrogatories

I. Notice of Deposition of Special Agent Vicki Wilson with the Alabama Attorney General's Office

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2024, the foregoing corrected motion has been electronically filed with the Clerk of the Court and therefore a copy has been electronically served upon counsel for Respondent:

Office of the Attorney General
Attn: Capital Litigation Division
501 Washington Avenue
Montgomery, AL 36130

Bernard E. Harcourt