

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

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

MOTION FOR FULL DISCLOSURE OF THE KITTIE CORLEY LETTER AND FOR
A HEARING AT THE COURT'S EARLIEST CONVENIENCE

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**MOTION FOR FULL DISCLOSURE OF THE KITTIE CORLEY LETTER AND
FOR A HEARING AT THE COURT'S EARLIEST CONVENIENCE**

FOR ALMOST TWENTY YEARS, since August 2004, the State of Alabama through its District Attorney for Houston County and its Attorney General has hidden, withheld, and actively obstructed the disclosure of a written confession by Petitioner's co-defendant, Catherine Nicole "Kittie" Corley, in which Kittie Corley confessed:

- i. that she alone, and not the Petitioner, bludgeoned the victim, Mr. Dewey Walker, to death with a baseball bat;
- ii. that she alone disposed of the baseball bat by throwing it in a trash dumpster;
- iii. that she had motive to kill Mr. Walker because, in her own words, "It was Dewey's time to go";
- iv. that she had "sex adventures at Dewey's" home, and some kind of personal relationship with the victim that allowed her to refer to him by his first name;
- v. that she alone is the one who "pawned everything" that was stolen from Mr. Walker's home; and
- vi. that she was involved *in another murder*.

Kittie Corley not only confessed to bludgeoning Mr. Walker to death, she also confessed her involvement in a second murder (which, according to the State of Alabama, Petitioner had nothing to do with). *See* Doc. 68, Exhibit B.

The Attorney General, however, has only produced one side of the Kittie Corley letter. *See id.* Petitioner David Wilson respectfully moves this Court for an order directing the Attorney General to produce the full Kittie Corley letter, both sides, and any relevant evidence regarding this witness. In support of this motion, Petitioner states:

1. Kittie Corley's confession to the murder of Mr. Dewey Walker is the single most material piece of exculpatory evidence for Petitioner David Wilson in the entire prosecutor's file (or at least, the part of it that the Attorney General is presently disclosing to Mr. Wilson). It is possible that the evidence the State is withholding regarding the second murder that Kittie Corley was involved in could be equally or more exculpatory. This confession directly contradicts what Kittie Corley told the police in her statement upon arrest. In this suppressed letter, she takes full responsibility for the over 100 contusions and abrasions on Mr. Walker's body—all of which the District Attorney attributed to David Wilson. She also confesses to be involved in a second murder.

2. Given that the scanned copy provided by the Attorney General is faded and very low quality, for ease of reference, the front side of Kittie Corley's letter states as follows:

Dear Sir,

My name is Catherine Nicole Corley & I am involved in 2 murders. I am in jail for conspiracy to commit murder & 2nd degree burglary. Did I kill anyone I with David my boyfriend [i.e. the fourth codefendant, Michael Ray Jackson] & Matt Marsh [in between lines, she writes "a friend"] late one night we sat around talking. We needed some money. Old Dewey's name came up we knew he had a lot of stereo equip in a van at his house, so early next morning we went to Dewey's. Me & David went in, was not hard to get in the house. Matt stayed in the truck. We took a baseball bat with us Dewey was not at home. I went in one room, David went in another room. About an hour later I heard Dewey hollering saying he was going to call the cops, he was hollering at me. I *** froze where I was. David slipped up behind Dewey and put an extension cord around his neck, Dewey would not fall. I did not know what to do so I grabbed the baseball bat & hit Dewey with it till he fell. David & I loaded up all we could find. We were there a few days taking things out. I pawned everything we got, split the money 3 ways. We took Dewey's van also. About one week later we got caught. I threw baseball bat in trash dumpster.

Can I plead insanity? I am on medications, lots of them. Was I on medications then No but I needed them. It was Dewey's time to go.

This story is true, only thing I left out was the sex adventures at Dewey's & that ain't no one's business.

Story on other side is true also. If I do not hear from you I know you did not want to take my case. Roll of the dice.

Respectfully,
Nicole

08.10.04

P.S. My nickname is Kittie.

(Doc. 68, Exhibit B) (original formatting preserved).

3. In its Notice of Compliance with Order, Doc. 69, Exhibit A, the Attorney General has taken the position that this Court's Order, Doc. 67, does not apply to the back side of the Kittie Corley letter where she discusses the other murder that she confesses to having been involved in. The Attorney General has therefore refused to disclose the full Kittie Corley letter.

4. Petitioner has never heard of the fact that Kittie Corley confessed to involvement in another, second murder. Upon information and belief, Petitioner was never given any information that Kittie Corley confessed to involvement in another murder.

5. In the first sentence of her confession, Kittie Corley specifically writes that "I am involved in 2 murders." At the bottom of the page, Kittie Corley writes that the "[s]tory on the other side is true also," referring to that other murder. Doc. 68, Exhibit B.

6. The Attorney General now claims that Kittie Corley's confession to involvement in another murder on the other side of the letter is "immaterial to [Petitioner's] guilt, his original trial, or the present case," and therefore is not subject to this Court's Order. Doc. 68, Exh. A.

7. Once again, the State misunderstands the due process requirements of *Brady* and the materiality of this evidence for purposes of the preliminary procedural issues of default, cause, and prejudice in the federal habeas corpus context. Kittie Corley's confession to involvement in a second murder is both material and favorable to Petitioner and must be disclosed to decide

preliminary federal procedural questions. It is material because it implicates: important questions pertaining to Kittie Corley’s motive for pleading guilty and to not testifying at Petitioner’s trial; any deals Kittie Corley may have received on that other murder, and whether she received more lenient treatment in the Dewey Walker case or agreed not to talk about it in exchange for testimony in another; the prosecutor’s motive for not calling Kittie Corley as the state’s lead witness at trial, and whether it was motivated by prosecutorial misconduct and a motive to withhold *Brady* evidence; and whether the prosecutor’s suppression of this evidence constitutes cause for the failure to present the *Brady* claim at the state trial. Petitioner’s defense that Kittie Corley alone bludgeoned Dewey Walker to death would no doubt have been bolstered by evidence of her participation in another murder. As such, “there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *United States v. Bagley*, 473 U.S. 667, 682 (1985). A “reasonable probability” of a different result is shown when the government’s evidentiary suppression “undermines confidence in the outcome of the trial.” *Bagley*, 473 U.S. at 678. Where a co-defendant’s confession and involvement in another murder is withheld from the jury there can be no confidence in the jury’s verdict. See *Brady*, 373 U.S. at 86. The second letter is also valuable impeachment evidence within the purview of *Brady*. Specifically, Corley’s confession to another murder might have been used to impeach the witnesses at trial, including detective Sgt. Luker, who testified at trial with regard to the credibility of Kittie Corley’s police statement—which was introduced at trial to deny her role in the bludgeoning of Mr. Walker. See *Bagley*, 473 U.S. at 676; *Giglio v. United States*, 405 U.S. 150, 154 (1972).

8. After reviewing the Kittie Corley letter, it is now evident why the District Attorney for Houston County, Doug Valeska, did not call Kittie Corley to the stand to testify: He would

have had no choice but to turn over Kittie Corley's letter—which not only inculpates her for the murder of Mr. Dewey Walker, but which also reveals on the opposite side her involvement in another murder. It is now clear that the State of Alabama adamantly suppressed this evidence, well aware of its material exculpatory nature as to Petitioner. The deliberate withholding weighs heavily in consideration of the procedural questions that this Court will need to address before reaching the merits of the claims in the Petition. The fact that Kittie Corley confessed to involvement in a second murder exponentially increases the possibility of prosecutorial misconduct and suppression of evidence, providing cause and prejudice for any procedural obstacles to resolution of the *Brady* claim on the merits.

9. The production of Kittie Corley's confession to involvement in a second murder is lawful, important, and necessary for a fair resolution of the procedural matters at issue, such as procedural default, cause and prejudice, and the contours of 28 U.S.C. § 2254(d).

10. The Attorney General's assertion that the full Kittie Corley letter, both sides, is "immaterial" to Mr. Wilson's case cannot be taken at face value. The Attorney General, through its counsel, actively withheld and obstructed the production of Kittie Corley's confession in federal court, stating to the federal Magistrate judge at a hearing in federal court on January 23, 2020, that Kittie Corley's letter confession *is not exculpatory*. At a time when only the Attorney General had access to the letter (or, for that matter, had seen the letter), and was actively refusing to produce it, the Attorney General stated to the court, as an officer of the Court:

THE COURT: But would you agree that it's exculpatory?

MR. ANDERSON: No, Your Honor, we're not. Having seen the letter myself. [...] The letter itself at this point is a red herring, Your Honor.

(Doc. 42, January 23, 2020, Hearing p. 20-21).

11. This statement by the Attorney General to the Court, as officer of the Court, was clearly false and misleading. The Attorney General, moreover, has withheld and obstructed the disclosure of the Kittie Corley letter since at least 2016, more than seven years now, when the Attorney General filed the “State of Alabama’s Motion to Withhold Ruling on Wilson’s Discovery Motion.” *See* Federal Record, Volume 28, Document 109, PDF page 65 (signed by Richard D. Anderson).

12. Undersigned counsel for Mr. Wilson made the Attorney General repeatedly aware, from the minute he stepped into this case, that there was an ongoing *Brady* violation, which had been “ticking” since 2004. (Hearing p. 27) Nevertheless, the Attorney General’s office continued to suppress the Kittie Corley letter—stating, as an officer of the Court, that it was not exculpatory.

13. For all the reasons set forth in this Court’s Memorandum Opinion and Order dated April 27, 2023, Doc. 67, the full Kittie Corley letter, both sides, and any other relevant evidence that relates to this witness must be produced in order for the Court to fully resolve the procedural questions ancillary to the merits of Petitioner’s *Brady* or ineffective assistance of counsel claims. Doc. 1.

14. Now that half of the Kittie Corley letter has been produced and reviewed by Petitioner, this case raises serious concerns about prosecutorial misconduct and violations of the rules of professional ethics. One question that needs to be addressed immediately is how any member of the bar of this Court could, as an officer of this Court, state to the Court that the front side of the Kittie Corley letter is not exculpatory.

FOR THE FOREGOING REASONS, Petitioner David Wilson respectfully requests an order from this Court directing the Attorney General to produce both sides of the full Kittie Corley

letter, as well as any other relevant evidence that relates to this witness—e.g., to any other offenses she may have confessed to, to any other offenses she was accused of, any plea deals that she made on these or other charges or cases, and all other and relevant information regarding Kittie Corley.

MOREOVER, given that this case raises serious concerns about prosecutorial misconduct and the rules of professional ethics, Petitioner respectfully requests that the Court set a hearing at its earlier convenience to address these issues.

Dated this 31st day of March 2023.

Respectfully submitted,



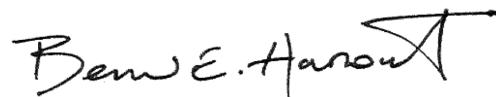
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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2023, the foregoing 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