19-6905

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

John Alan Conroy
Petitioner

VS.

Sheriff Cliff Harris, pecos County Sheriff's Department

Pecos County Sheriff's Department
Respondent(s)

ON PETITION FOR A WRIT OF CERTIORARI TO

PETITION FOR WRIT OF CERTIORARI

John Alan Conroy
42054-177
United States Penitentiary
P.O. Box 1000
Marion, Illinois 62959

Questions Presented

(1) After a criminal defendant's plea of guilty, if it is later found that the government did not live up to the requirements of discovery, is the withholding of multiple recorded statements, which were ordered by a federal court to be produced for inspection by the defense under Rule 16 of the Federal Rules of Criminal Procedure, and the recordings are known to law enforcement agents, a violation of Due Process and a violation under Brady v Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963)?

(2) Does a state (Texas) law enforcement agency have to comply with an order granted under Rule 16 of the Federal Rules of Criminal Procedure by a federal court, when such agency is in possession of recorded statements are covered by Rule 16, and the recorded statements have direct impact upon the case and decision the defendant made to plead guilty?

(3) Is a civil litigant entitled to appointment of counsel, when the litigant is not a trained attorney, and does not have any access to any state laws, rules or procedures and can not look up relevant case laws, nor afford to pay an attorney, to properly present his case, and only has access to the federal laws, rules and procedures since he is an inmate in a federal prison that is not required to supply any state resources for this purpose?

(4) Is John Alan Conroy entitled to at least an IN CAMERA review of the reorded videos by the District Judge, as in the joined case Conroy v Sloan, et al., 2016-523428 (99th District Court, Lubbock County, 2016), where the appellate court ordered a writ of mandamus for the interrogation video of Petitioner, John Alan Conroy, directed to the Texas Department of Public Safety?

(5) Can an appellate court consider evidence contained on a floash drive that the Petitioner did not get to examine, nor review, and of which was not entered into evidence nor the record, and was part of a private transaction between Pecos County's attorney and the Judge?

(6) Can a Judgment of Dismissed With Prejudice be proper when the case is in pursuit of possible exculpatory or helpful information, documentation, or materials that could be used in a federal habeas at a later date, where the Dismissal with Prejudice would forever bar the inmate from the evidence?

(7) Does the Michael Morton Act (2014), Section 2(k) apply in this case with the continuing duty abligation of the state, and does the Michael Morton Act override Texas Governmetn Code § 552.028 as Section (m) of the Michael Morton Act states?

(8) Is there a continuing duty of the Federal Government to hand over newly discovered Brady materials to a person who pled guilty, if that material would be beneficial to the defendant?

Identity of Parties

Petitioner:

John Alan Conroy
42054-177
United States Penitentiary
P.O. Box 1000
Marion, Illinois 62959

No available phone number, must contact prison staff

Respondents:
Pecos County Sheriff's Department
1774 N Hwy 285
Ft. Stockton, Texas 79735

Sheriff Cliff Harris, Pecos County
1774 N Hwy 285
Ft. Stockton, Texas 79735

Respondents attorney of record:

Shafer, Davis, O'Leary & Stoker
P.O. Drawer 1552
Odessa, Texas 79760

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Table Of Authorities

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Supreme Court of Texas court appears at Appendix D to the petition and is

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was Sept. 20, 2019. A copy of that decision appears at Appendix ___D___.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

The Court of Appeals for the Seventh District of Texas Case No. 07-18-00381-CV appears in Appendix A

Constitutional and Statutory Provisions Involved

Title 28 United States Code, Section 2255 provides:

(a) A prison in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Title 28 United States Code, Section 2241 provides:

(a) Writ of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

All other statutes and laws are provided in the Appendix.

Statement of the Case

The issue of this case is specifically for the production of the video(s) that Pecos County Sheriff's Department made on July 3, 2010, while John Alan Conroy was in custody after his arrest on that day. this video shows the arrest, initial questioning, transport to the Ft. Stockton Texas Department of Public Safety (TX DPS) office, the trip back out to Allyson Ranch, the search of John Alan Conroy's 2005 Thor Tahoe travel trailer, the conversations with Texas Ranger Don Williams about such search, the transport back to TX DPS in Ft. Stockton, and the electronic media that was seized at the trailer being unloaded and taken in the DPS office for a forensics search. Conversations that occurred during this time, with know law enforcement officers, such as Investigator Jim Rider, of the Howard County District Attorney's Office about the search of the electronic media being conducted and what they expected to find on such media.

Pecos County Sheriff's Department never complied with the discovery granted in Federal District Court for the Northern District of Texas, case no. 1:10-CR-0041-C, (See Appendix "F" Line 16, of the Appellate Record). John Alan Conroy's attorney had misrepresented the facts concerning the videos claiming he had reviewed them, when in fact he had never even recieved them.

Pecos County Defendants were added in April of 2018 after the investigation and interrogatories of David Sloan concluded that the videos were in fact never handed over.

Every step of the way in every court, Petitioner has brought up the Brady violation of withholding not only the Pecos County recordings, but two more made by Texas Department of Public Safety.

The Judge for the District Court case, number 2016-523428, was Judge Sowder of the 99th District Court for Lubbock County, Texas. (See Appendix "C" for Judgment)

The Case against the Pecos County defendants was dismissed with prejudice, stating that John Alan Conroy must pursue under a Public Information request to Pecos County Sheriff's Department, which Petitioner did on November 20, 2018, but has not yet received a response.

The Defendants named were Pecos County Sheriff's Department and Sheriff Cliff Harris of Pecos County.

After the dismissal, John Alan Conroy moved the case to the Court of Appeals for the Seventh Circuit of Texas, with appellate number 07-18-00381-CV, after the Pecos County defendants were severed from the other defendants in the District Court case.

The Memorandum Opinion in the Appellate Court was issued on April 29, 2019, with a motion for reconsideration denied on May 29, 2019 having been considered by Judges Quinn, Campbell and Pirtle. Only th ecase number is known to the Petitioner, and the citation is not available to him. (See Appendix "A" and "B")

The Judgment of the trial court was affirmed.

(See Appendix "A", Judgment, which is the same as Appendix "A" in Appellate Record, as the Petitioner has used the Same Appendix with one addition)

The Supreme Court for the State of Texas denied review of the petition on September 20, 2019. (See Appendix "D", case number 19-0606).

Statement of Facts

On July 3, 2010 Pecos County Sheriff's Department participated in the arrest and detention of John Alan COnroy. These events and each event following, where John Alan conroy was in a patrol vehicle belonging to Pecos County Sheriff's Department was recorded.

Once John Alan Conroy was a criminal Defendant in federal court, a motion for discovery was filed and granted on August 20, 2010 (See Appendix "D" of Appellant Record) it was required under Rule 16 of the Federal Rules of Criminal Procedures that ALL recorded statements made to known law enforcement officers were to be handed over.

Pecos County Sheriff's Department did not comply with that order. The videos made by Pecos County Sheriff's Department that day have never been provided for inspection and review by John Alan Conroy, nor his counsel, even though they could have been used in Conroy's preparation for a defense.

Pecos County Sheriff's Department was not the only agency to violate Rule 16 of the Federal Rules of Criminal Procedure. Texas Departmentof Public Safety withheld ALL of their recordings. This includes the interrogation video of July 3, 2010 and a recording made on July 9, 2010 during transport by Texas Ranger Don Williams.

The State consistently uses rules such as Texas Civil Practice and Remedies Code to deny any information, including that which was ordered by a federal court during discovery, to be handed over for inspection. (See Appendix "K")

Summary of the Argument

There is a split in the United States District Courts, the state courts, and the civil and criminal courts as to whether the withholding materials in violation of Brady v Maryland is a constitutional violation after the nondisclosure was found after a party pleads guilty. In this case it has been proven that multiple videos or recordings that were to supposed to be handed over during a discovery phase of a federal criminal trial were withheld in violation of the government's duty to disclose. This would make it impossible for an attorney to come to a conclusion as to whether or not his client might plead guilty. The video from Pecos County does show multiple constitutional violations made by law enforcement on July 3, 2010, including the search of petitioner's electronic media without a warrant nor a consent to search. It also recorded part of the coercion to obtain a consent to search the travel trailer of the Petitioner. As a remedy to this, the simplest order would be for an IN CAMERA review by a judge to determine whether or not the Petitioner is entitled to it.

This Court should decide that Pecos County has to comply with federal discovery orders.

The Court of Appeals should not have considered evidence which was never presented to the Petitioner nor entered into evidence.

The dismissal with prejudice regarding evidence was wrong.

The Michael Morton Act does a override Texas Government Code § 552.028, and this is a right to all inmates, including federal.

(See Appendix "I" for Michael Morton Act)

(See Appendix "J" for § 552.028 which states Public Information can be denied based solely on status as inmate)

Argument

I. Constitutionality of Brady Under a Guilty Plea

In the case Alvarez v The City of Brownsville, 904 F.3d 382 (5th Cir. 2018) Circuit Judge Gregg Costa, joined by Judge Graves dissented stating:

"Let this sink in: If George Alvarez had been convicted of a federal crime in this circuit, he would have served his full 10-year sentence despite eventually discovering that the government failed to disclose an exulpatory video. That is because we are the only federal court of appeals that has held that a defendant who pleads guilty is not entitled to evidence that might exonerate him. Fortunately for Alvarez, and for those who believe that "justice suffers when any accused is treated unfairly," Brady v Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), he was convicted of a state offense. For almost forty years, Texas has interpreted the federal Brady right to require the government to provide exculpatory information "to defendants who plead guilty as well as to those who plead not guilty." Ex parte Lewis, 587 S.W. 2d 697, 701 (Tex. Crim. App. 1979); see also Ex parte Johnson, 2009 Tex. Crim. App. Unpub. LEXIS 358, 2009 WL 1396807, at *1 (Tex. Crim. App. May 20, 2009) (vacating a guilty plea because of a Brady violation). Texas is not alone. The highest courts of other states that have considered this question agree that defendants have a federal due process right to exculpatory evidence before they plead guilty. See Buffey v. Ballard, 236 W. Va. 509, 782 S.E. 2d 204, 218 (W. Va. 2015); State v. Huebler, 128 Nev. 192, 275 P. 3d 91, 96-97 (Nev. 2012); Hymen v. State, 397 S.C. 35, 723 S.E.2d 375, 380 (S.C. 2012); Medel v. State, 2008 UT 32, 184 P.3d 1226,

1235 (Utah 2008). Because we now have "for the most part a system of pleas, not a system of trials," Lafler v. Cooper, 566 U.S. 156, 170, 132 S. Ct. 1376, 182 L. Ed.2d 398 (2012), today's opinion reaffirming our outlier position means that the vast majority of defendants in this circuit will not have a right to relief if it comes to light after their conviction that the government suppressed exculpatory evidence."

And further, "And we should not make the common mistake of treating federal decisions as the universe of caselaw on this issue. Our state court peers also interpret the federal Constitution. Four state supreme courts have held Ruiz that the federal Brady right applies to exculpatory evidence at the plea phase, and the Texas Court of Criminal Appeals has reaffirmed its long ago adoption of that view. Buffy, 782 S.E.2d at 216 ("[T]he better-reasoned authority supports the conclusion that a defendant is consitutionally entitled to exculpatory evidence during the plea negotiation stage."); Hyman, 723 S.E.2d at 380 (noting that an applicant can challenge the "voluntary nature of a guilty plea" by asserting a Brady vioaltion); Huebler, 275 P.3d at 96-97 (concluding that "the due-process calculus also weighs in favor of the added safeguard of requiring the State to disclose material exculpatory information before the defendant enters a guilty plea"); Medel, 184 P.3d at 1235 (providing the requirements for a guilty plea to be rendered involuntary based on a Brady violation); Johnson, 2009 Tex. Crim. App. Unpub. LEXIS 358, 2009 WL 1396807, at *1;(vacating a guilty plea because of a Brady violation); 2009 Tex. Crim. App. Unpub. LEXIS 358, [WL] at *1-*2 (Cochran, J. concurring)(explaining that "Ruiz, by its terms,

applies only to material impeachment evidence"); see also State v. Kenner, 900 So. 2d 948, 952-53 (La. App. 4 Cir. 2005), reversed on other grounds, 917 So. 2d 1081 (La.2005). No state high court has ruled the other way. See Wayne Lafave, et al. 5 Crim. Proc. §21.3(c) (4th ed. 2015)(noting that "certainly the better view"is of those courts that require Brady disclosure of exculpatory evidence to defendants who plead)."

It is understandable as to the multiple interpretations of Brady applying to plea agreements. This issue was highlighted by Michael Nasser Petegorsky in his article Plea Bargaining in the Dark: The Duty to Disclose Exculpatory Brady Evidence During Plea Bargaining, published in Volume 81, Issue 6, Article 13 of the Fordham Law Review (2013). Section II. Brady challenges to Guilty Pleas: The Circuit Split, pg. 3614, describes the Sixth Circuit as allowing a post-plea Brady challenge (pg. 3615), the Eighth Circuit held that a defendant in a federal habeas corpus proceeding could attack the knowing and voluntary nature of his guilty plea based on the suppression of material evidence (pg. 3616).

The Fifth, Fourth, and Second Circuits all find United States v. Ruiz, 536 U.S. 622, 632 (2002) precludes all Brady challenges to guilty pleas (pgs. 3628-3629), but the Seventh and Tenth Circuits find that Ruiz suggest that failure to disclose material exculpatory evidence violates Due Process (pgs. 3625-3628).

This is important since the Petitioner is a federal inmate in the Seventh Circuit, specifically the Southern District of Illinois which has previously stated:

"The wrongful withholding of a video recording of coercion and improper inducements would support a constitutional violation similar to those in Brady v. Maryland, 373 U.S. 83 (1963), and Brady v. United States, 397 U.S. 742 (1970). However, Conroy has not shown good cause for permitting discovery in this situation. Conroy does not allege that the video recording of his interrogation was sought and improperly withheld (see Webster v. Daniels, 784 F.3d 1123, 1139-40 (7th Cir. 2015)), and he does not offer argument an affidavit or other evidence to support his assertion that a video recording exists and has been improperly withheld from him. Also, the withholding of discovery vis-a-vis his plea and sentencing was raised in Conroy's Section 2255 motion and rejected. See Conroy, No. 12-cv-015, Doc. 8, pp. 6-9. (See Conroy v. Walton, 3:15-cv-528-DRH (S.D. Ill 2015))

The videos in question would have led to a large amount of information that would have been used to not only make a decision as to plea guilty or not, but also whether to file for a suppression of evidence in John Alan Conroy's federal case. If the production of this video had taken place, Conroy and his attorney, David Sloan of the Lubbock, Texas Federal Public Defender's Office, would have been able to review the following:

1. The arrest of John Alan Conroy on July 3, 2010;
2. Initial questioning in patrol vehicle;
3. Search of John Alan Conroy's work truck;
4. Transport to the Ft. Stockton, Texas Department of Public Safety Office (DPS);
5. Transport back to Allyson Ranch and Conroy's 2005 Thor Tahoe Travel Trailer;

6. Conversation with Pecos County Deputy stating I did not want to go back to the work site and be paraded around;

7. Conversation with Ranger Williams for consent to search trailer;

8. The search of the travel trailer, with electronic media being seized (not searched) and loaded into Ranger William's vehicle in front of me;

9. Transport back to Ft. Stockton, Texas DPS Office;

10. The unloading of the seized electronic media from the vehicle and taken into the building;

11. Conversation with Investigator Rider, of the Howard County District Attorney's Office, about search of previously seized electronic media being done at DPS while Conroy was waiting in Pecos patrol vehicle;

12. Transport to Pecos County Jail.

13. And anything else which may be disclosed for review by the viewing of this video(s).

The Texas Court of Criminal Appeals state that withheld materials before a guilty plea is a consitutional violation under Brady, while the Court of Appeals for the Seventh District of Texas, Amarillo Division found that because John Alan Conroy plead guilty there would be no constitutional violation under Brady. This creates a direct conflict that needs to be addressed and settled for equality among litigants in the state of Texas ; and across the United States.

A full copy of Pleading in the Dark by Michael Nasser Petegorsky, Fordham Law Review, Volume 81, Issue 6, Article 13, pages 3598-3650 has been added to the Appendix as "G" for a full explaination of the Brady question pertaining to pleas.

II. Split Decision as to Whether Brady v Maryland is a Constituional Right After a Plea of Guilty

The Courts have had very different decisions to whether Brady v Maryland, applies after a defendant pleads guilty then discovers that the government failed in their responsibility to produce required materials.

The Federal Circuits decisions are:

First Circuit used United States v Mathur, 624 F.3d 498 (1st Cir. 2010 to decide Brady only applies to trials.

The Second Circuit suggested in Friedman v Rehal, 618 F.3d 249 (2nd Cir. 2010) that all post-plea Brady challenges were waived.

The Third Circuit stated "we assume for the sake of argument, but do not hold, that Brady may require the government to turn over exculpatory information prior to entry of a guilty plea" in United States v Brown, 250 F.3d 811, 816 n.1 (3rd Cir. 2001).

The Fourth Circuit found in United States v Moussaoui, 591 F.3d 263 (4th Cir. 2010) that "[T]he Brady right is a trial right".

The Fifth Circuit, ruling in Matthew v Johnson, 201 F.3d 353 (5th Cir. 2000), was the first circuit court to lay down a full, detailed opinion holding that a defendant could not challenge the validity of a guilty plea due to a Brady violation.

The Sixth Circuit decided in Campbell v Marshall, 769 F.2d 314 (6th Cir. 1985) that a Brady violation could negate the voluntary and knowing character of a guilty plea.

The Seventh Circuit held in McCann v Mangialardi, 337 F.3d 782 (7th Cir. 2003) that there is a strong suggestion that the government is required to disclose material prior to a guilty plea.

The Eighth Circuit took up the issue in White v United States, 858 F.2d 416 (8th Cir. 1988) and stated that a defendant in a federal habeas corpus proceeding could attack the knowing and voluntary nature of his guilty plea based on the suppression of material evidence.

The Ninth Circuit adopted an even more expansive view of a defendant's Brady rights during plea bargaining and allowed post-plea Brady challenges, finding that a guilty plea can not be knowing and voluntary if made without the knowledge of material evidence suppressed by the government. They further held that a Brady violation automatically renders a plea unknowing and involuntary because a defendant's decision whether or not to plead guilty is often heavily influenced by his appraisal of the prosecution's case.

The Tenth Circuit held that post-guilty plea Brady challenges for suppression of exculpatory evidence were permitted in both United States v Wright, 43 F.3d 491 (10th Cir. 1994) and United States v Ohiri, 133 F. App'x 555 (10th Cir. 2005).

The Eleventh Circuit has yet to decide the issue.

The D.C. Circuit stated in United States v Nelson, 979 F. Supp.2d 123 (D.D.C. 2013) "[A]llowing a defendant to argue that his guilty plea was not voluntary and intelligent because it was made in the absence of withheld Brady material is sensible, because a defendant's decision whether or not to plead guilty is often heavily influenced by his appraisal of the prosecutions case. A waiver can not be deemed intelligent and voluntary if entered without knowledge of material information withheld by the prosecution."

State Courts have taken up the issue also. Texas has interpreted the Brady right to require the government to provide exculpatory information to defendants who plead guilty as well as those who plead not guilty. See Ex parte Lewis, 587 S.W. 2d 697, 701 (Tex. Crim. App. 1979) and Ex parte Johnson, 2009 Tex. Crim. App. May 20, 2009)(vacating guilty plea because of a Brady violation). Texas is not alone. the highest courts of other states that agree that those who plead guilty retain the right to challenge Brady violation post-plea are West Virginia (See Buffey v Ballard, 236 W. Va. 509, 782 S.E. 2d 204, 218 (W. Va. 2015)); Nevada (See State v Huebler, 128 Nev. 192, 275 P. 3d 91, 96-97 (Nev. 2012); South Carolina (See Hymen v State, 397 S.C. 35, 723 S.E.2d 375, 380 (S.C. 2012); Utah (See Medel v State, 2008 UT 3, 184 P.3d 1226, 1235 (Utah 2008).

It is important to note that the Texas Court of Criminal Appeals has recognized this right for over 40 years. But since I was in the civil courts (Court of Appeals for the Seventh District of Texas) they decided that a Brady violation did not amount to a constitutional issue once I pled guilty (See Appendix "A", page 4).

This aslo causes a concern for criminal defendants. If a person is arrested by Texas state law enforcement, such as the Petitioner was, and then prosecuted by the federal government, such as the Petitioner was, then he retains the Constitutional right to Brady information under state laws, but once he walks into the federal courthouse he loses this Constitutional right.

Being a citizen of the State of Texas, the Petitioner retained that right until the federal court took it away. But if Petitioner had been prosecuted under the state system he would have retained the right to Brady information, even if he plead guilty.

Another point of conflict concerning this right is that the Petitioner was convicted in the federal courts for the Fifth Circuit that state the right to Brady information is waived upon a plea of guilty, yet the Seventh Circuit, where the Petitioner is being held states that a person can never give up the right to Brady materials, whether you plead guilty or not guitly.

This matter needs to be addressed by this court so that it is not dependent upon which court one is tried in as to what Constitutional rights you may have later in any post-plea process.

The information for this argument was taken from Appendix "G", Plea Bargaining in the Dark, and from Alvarez v The City of Brownsville, 904 F.3d 382 (5th Cir. 2018).

The Supreme Court of the United States has jurisdiction to decide this matter under Part III., Rule 10(a) (b) and (c) of the Rules of the Supreme Court of the United States (2013).

There was an important case decided by the Fifth Circuit, United States v Conroy, that is used to deny Brady violations after a guilty plea. It is important to note this is not the Petitioner.

III. Compliance of State Law Enforcement Agencies Under Rule 16 of the Federal Rules Of Criminal Procedure

In Kyles v Whitley, 514 US 419, 131 L ED 2d 490, 115 S Ct. 1555 (1995), the Supreme Court of the United States held that it was the government's responsibility as a whole, including law enforcment, to abide by the rules established by Brady v Maryland, 373 US 83, 83 S. Ct 1196 (1963), whereupon it is a due process obligation under the Federal Constitution to disclose material evidence favorable to a criminal defendant. Under Kyles, this requirement stands whether closure or nondisclosure is good faith or bad faith on any part of the government.

State law enforcement agencies are part of the goverment as a whole, they are not exempt from complying with established federal law. When a state law enforcement agency is in possession of recorded statements, covered by Rule 16 of The Federal Rules of Criminal Procedure, they are REQUIRED by federal law, under Kyles, to turn them over to a federal criminal defendant or their counsel when granted discovery in federal court proceedings under Rule 16 of The Federal Rules of Criminal Procedure. (See Appendix "H")

This is mandated by the Supreme Court of the United States, and failure to comply, willfully or otherwise is a direct violation of the federal criminal defendant's constitutional rights and established federal law.

Contrary to the Defendant's arguments, this video has never been ruled on by another court, for another suit, especially in Conroy v Rider, 575 Fed. Appx. 509 (5th Cir. 2014). (See Appendix "L").

IV. Appointment Of Counsel

Exceptional Circumstances

John Alan Conroy is a federal inmate. As such he has acces to a law library that has federal court, federal appellate court, and United States Supreme Court decisions. Also provided are the rules for each of these courts. Federal prisons do not allow access to state records and laws, they only allow access to federal law. If they did allow access to state records and laws, they would have to update the records for each state law, their rules and procedures, for ever state in the country. John Alan Conroy is not in a state prison, he is a federal inmate in a federal prison for a federal crime. The Federal Bureau of Prisons does not provide resources for accessing state laws, rules or procedures. It is cost prohibitive, inmates in a federal prison are federal inmates; not state.

John Alan Conroy has been able to reference a small number of Texas State cases and laws from those few federal cases that quote them, or reference them in previous filings by others, but he has no access to it other than that. There is no way for him to see the entire case, and read them in full.

Court appointed counsel, however, has full access to these resources. For this reason, and the reasons stated above, the court should appoint John Alan Conroy counsel so that he may also have access to these resources and his briefs can be properly prepared. For these same reasons, the District Court and the Appellate Court were incorrect in denying John Alan Conroy appointment of counsel.

V. In Camera Review

As in the severed case from the District Court, case no. 2016-523428 and 2016-523428-A, and the Appellate case no. 07-18-00324-CV, the COurts determined an In Camera review of the interrogation videos of John Alan Conroy on the same day, July 3, 2010, were to be presented to the Court and Judge Sowder for review before any, in part, partial, or whole interrogation video is to be produced for John Alan Conroy to review and inspect.

The videos held by Pecos County Sheriff's Department, should, at the very least, have been ordered for an In Camera review before the dismissal with prejudice, where the Petitioner can now never pursue the evidence going forward.

The Petitioner even complied with the ruling by Judge Sowder and filed a Public Information Request with Pecos County Sheriff's Department November 20, 2019. No response has been made to answer this request.

(See Appendix "E", judgment for an In Camera review against Texas Department of Public Safety)

Discovery was denied in the current case partially due to Texas Civil Practice and Remedies Code, Sec. 30.006(c) and (d) (Appendix "K").

VI. Consideration of Evidence not in the Record

In the Memorandum Opinion for the Court of Appeals for the Seventh District Court of Texas, the Court came to the conclusion that the District Court Record was incomplete. Among the items not presented in the record was a flash drive that had been handed to Judge Sowder on July 23, 2018 by Mr. Rouse, the attorney representing the Pecos County Defendants. this flash drive was never presented to John Alan Conroy in any fashion, and the flash drive, as far as the Petitioner knows, was never entered into evidence, henceforth it would not be part of the record.

The transaction of handing over the flash drive to Judge Sowder, and the data therein, was a private transaction, which the Petitioner John Alan Conroy was not part of, and as such the COurt of Appeals should not have assumed that the information presented on such drive was beneficial to the Defendant(s). Since John Alan Conroy has not been able to review this information, it should be barred from consideration and no decision should be made upon theroretical ideas.

In the footnote on page 2 of the Memorandum, it states that Pecos County should not have used petitioner's federal cases under Rule 91a motion because Conroy did not present the federal cases himself in his pleadings. That is wrong. Each case WAS presented to the District Court with a synopsis detailing that Pecos County had nothing to do with each case. This was presented and is the record on the Clerk's Record Vol. 1, Pgs.

VII. Dismissal With Prejudice

During Court proceedings on the 23 of July, 2018, (Civil Action No. 2016-523428; Trial Transcripts, Vol. 1, pgs. 15-16, ln. 18-25, ln. 1-7); Judge Sowder had this to say:

> "If a citizen is in--being incarcerated and there's some evidence out there that may help them to file a writ, whether it's 20 years down the road--we all know in these days and times that things get filed many years afterwards, and the newspaper and the law books are full of exonerations and everything many years after conviction. So let's just say this videotape exists and for argument's sake there's something in there that he could argue that he didn't have before. Maybe he didn't. But for argument's sake, a videotape that does exist that helps him in his efforts to file some type of habeas corpus or other type of relief. Would the DPS be opposed to turning that over?"

Judge Sowder acknowledged that the pursuit of possible exculpatory evidence for future habeas relief is not only common, but proper. A judgement of "Dismissed With Prejudice" is improper when the case concerns the pursuit of possible exculpatory evidence, information, documentation, or helpful materials which could help provide the foundation for a federal habeas corpus at a later date. By issuing such an order, the court makes it impossible for the inmate to access these materials, and forever bars him from using them in any type of habeas relief.

VIII. Application of the Michael Morton Act

The Michael Morton Act which passed in 2014 expanded the rights to criminal defendants pertaining to the materials which they are to receive, basically an open file from the prosecution as to the materials that the prosecution has in their possession against the criminal defendant. Under Section 2 (k) the Act states: "(k) If at any time before, during, or after trial the state discovers any additional document, item, or information required to be disclosed under subsection (h), the state shall promptly disclose the existence of the document, item, or information to the defendant or the court."

Although the Petitioner is a federal inmate, all the initial investigation was done by state law enforcement, under the direction of a state attorney. So, does that give the Petitioner the rights associated with the Michael Morton Act?

The Michael Morton Act (the Act) also specifically states "after trial", but under the Brady doctrine, would it apply to plea bargains as well?

The State of Texas has consistently denied the production of the interrogation video under the Texas Government Code §552.028, which is in direct conflict with the Michael Morton Act, and as a resolution the Act states: "(m) To the extent of any conflict, this article prevails over Chapter 552, Government Code." (See Appendix "I" and "J")

Even though the Petitioner is a federal inmate, the Act does not differentiate the difference between state and federal inmates, and as such this right should apply to the Petitioner.

Conclusion

the Petitioner asks this Court to take up the issue of whether Brady v Maryland applies to a person who plead guilty, but found out years later that the government has evidence they were required to produce pre-plea, but did not, and that evidence can show the police misconduct, such as threatening a defendant with death to obtain a confession, or consent to search.

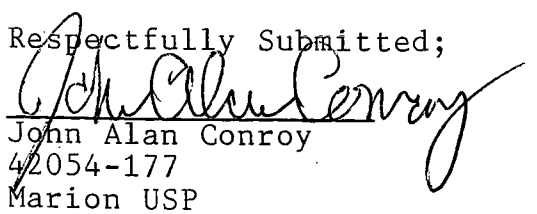
The Petitioner asks this Court to consider whether or not state law enforcement has to comply with a federal order for discovery in a federal criminal case.

The Petitioner asks this Court to make a determination as to whether the denial of the case "with prejudice" is just when it will forever bar evidence that could be beneficial to the Petitioner as stated by two federal courts.

The federal government does have a continuing duty to disclose material information to an individual even after a plea of guilty.

A court should not be able to take into consideration evidence that was not entered into evidence, nor given to all parties for review, in determining whether to dismiss a case.

Respectfully Submitted;



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