

22-6670
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JAN 27 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

JIMMY RAY LACY, JR. — PETITIONER
(Your Name)

vs.

F. ARTIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JIMMY RAY LACY, JR.
(Your Name)

THUMB CORRECTIONAL FACILITY 3225 JOHN CONLEY DR.
(Address)

LAPEER MICHIGAN 48446
(City, State, Zip Code)

NONE

(Phone Number)

QUESTION(S) PRESENTED

I. Was Jimmy Ray Lacy Jr. denied a fair trial under the fourteenth amendment when a key state witness misled the jury as to the benefits received and expected in exchange for his testimony ?

II. Was Jimmy Ray Lacy Jr. denied his sixth amendment right to counsel when the Genesee County Prosecutors office used a jailhouse informant to circumvent that right ?

III. Was Jimmy Ray Lacy Jr. denied due process under Brady v. Maryland when the prosecution withheld material and exculpatory evidence pertaining to jailhouse informant Reginald Davidson ?

IV. Was Jimmy Ray Lacy Jr. rights violated to a fair trial from multiple instances of prosecutorial misconduct ?

V. Was Jimmy Ray Lacy Jr. denied the effective assistance of appellate counsel as both a substantive claim and as a defense to claim of procedural default ?

VI. Was Jimmy Ray Lacy Jr. entitled to an evidentiary hearing as to counsels performance and the extent of jailhouse informant Reginald Davidson's relationship with the Genesee County Prosecutor's office in this case ?

VII. Was petitioner Lacy denied his sixth amend. right to the effective assistance of counsel under this court's precedent of

Massiah v United States, 377 U.S. 201 (1964) and did the Sixth Circuit Court as well as the Court Of Appeals fail to apply the appropriate standard when reviewing petitioner's Massiah claim which involved the use of information from an informant acting as an agent for the state.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

People v Jimmy Ray Lacy Jr. C.O.A Docket No. 295274 (3-15-2011)

People v Jimmy Ray Lacy Jr. M.S.C. Docket No. 143033 (7-25-2011)

People v Jimmy Ray Lacy Jr. C.O.A. Docket No 310408 (2-15-2013)

People v Jimmy Ray Lacy Jr. M.S.C. Docket No. 146833 (7-30-2013)

People v Jimmy Ray Lacy Jr. C.O.A Docket No 345870 (2-01-2019)

People v Jimmy Ray Lacy Jr.M.S.C. Docket No. 159336 (9-10-2019)

LACY v. CHEEKS United States District Court for the Eastern District of Michigan
Case No. 2:14-CV-11120 Habeas Denied (3-23-2022)

LACY v. CHEEKS United States Court of Appeals for the Sixth Circuit certificate
of Appealability and motion for leave to proceed In Forma Pauperis Case No.. 22-
1311 denied (8-25-2022)

LACY v. CHEEKS United States Court of Appeals for the Sixth Circuit motion to
rehear en banc Case No. 22-1311 denied (11-8-2022)

LACY v. CHEEKS United States Court of Appeals for the Sixth Circuit motion for
en banc rehearing Case No. 22-1311 denied (11-23-2022)

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STATUTES AND RULES

U.S.C. > 2254 (d)(1)

U.S.C. > 2254 (d)(2)

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 A 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 B to the petition and is

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

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

The opinion of the highest state court to review the merits appears at Appendix H 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 State of Michigan Court of Appeals court appears at Appendix E to the petition and is

[] reported at _____; or,
[] 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 August 25, 2022.

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: November 23, 2022, and a copy of the order denying rehearing appears at Appendix D.

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).

For cases from **state courts**:

The date on which the highest state court decided my case was September 10, 2019. A copy of that decision appears at Appendix H.

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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution guarantees that, no state shall deprive any person of liberty without due process of law.

U.S. Constitution Amendment XIV

The Sixth Amendment to the United States Constitution guarantees that in all criminal prosecutions, the accused shall have the assistance of counsel for his defense. U.S. Constitution Amendment VI

STATEMENT OF THE CASE

On October 29, 2009, Jimmy Ray Lacy Jr. was convicted of second degree murder M.C.L. § 750.317; Felon in possession of a firearm, M.C.L. § 750.224f; and possession of a firearm during the commission of a felony M.C.L. § 750.227b, following a jury trial in Genesee County Circuit Court, Flint Michigan. On December 2, 2009 trial judge, the Honorable Richard B. Yuille, sentenced Mr. Lacy to concurrent prison terms of 35 to 70 years for the murder conviction and 3 to 5 years for the felon in possession conviction and a consecutive two year sentence for the felony firearm conviction. On direct appeal, Mr. Lacy's convictions were affirmed in an unpublished PERCURIAM opinion. [People v Jimmy Ray Lacy Jr., C.O.A. file No. 295724 (March 15, 2011)]. On July 25, 2011, the Supreme Court denied leave to appeal by order, thus concluding the appeal by right. [People v. Jimmy Ray Lacy Jr., M.S.C. File No. 143033 (July 25, 2011)].

Following completion of the appeal by right, on November 28, 2011, Mr. Lacy properly filed a motion for relief from judgement pursuant to M.C.R. 6.502 in the Genesee County Circuit Court. On March 30, 2012, the Honorable Richard B. Yuille denied the motion for relief from judgement. [People v. Jimmy Ray Lacy, Jr., Genesee County Circuit Court No. 2008-23410-FC (March 30, 2012)]. On February 15, 2013, the Michigan Court of Appeals denied leave to appeal, the Circuit Court denial of Mr. Lacy's motion for relief from judgement. [People v. Jimmy Ray Lacy, Jr., C.O.A. File No. 310408 (February 15, 2013)]. On July 30, 2013, the Michigan Supreme Court denied Mr. Lacy's leave to appeal, thus concluding

the collateral appeal. [People v. Jimmy Ray Lacy, Jr., M.S.C. File No. 146833 (July 30, 2013)]. On March 14, 2014, Mr. Lacy filed a petition for Writ of Habeas Corpus in the United States District Court for the Eastern District of Michigan. On May 22, 2014, the habeas case was held in abeyance pending petitioner Lacy's return to State Court to exhaust further claims. Mr. Lacy filed a Second-In-Time Motion for relief Judgement and Amendments thereto. He fully exhausted his postconviction claims in Michigan Courts. [Trial Court Opinion & Order April 13, 2018, C.O.A.. Order February 1, 2019 and M.S.C. Order September 10, 2019.] Mr. Lacy had sixty (60) days to return to Federal Courts with supplemental pleadings. Mr. Lacy's ex-counsel sought and obtained a thirty (30) day extension of time or through December 12, 2019 in which to file supplemental pleadings. The supplemental pleadings adopts by reference the arguments made in his previously filed petition and brief in support.

STATEMENT ON CUSTODY

Mr. Lacy was sentenced on December 2, 2009 and the original petition was filed in March of 2014. At that time Mr. Lacy was serving his sentence at the Earnest C. Brooks Correctional Facility in Muskegon Heights Michigan 49444. Mr. Lacy is currently housed at the Thumb Correctional Facility in Lapeer Michigan 48446. Warden F. Artis is the Warden of the correctional facility and is the person holding Mr. Lacy in custody.

STATE COURT OPINION / TRIAL FACTS

Appeal of the Michigan Court of Appeals summarized the case

facts as:

According to the evidence at trial, defendant and the victim became involved in an argument as the victim was attempting to purchase drugs from defendant. While the victim was returning to his vehicle, defendant shot him three times. The principle evidence against defendant was the testimony of the victim's brother, Aaron Williams, who testified that he was present at the time of the shooting and saw defendant shoot the victim. Another witness, Terrence Smith, who was defendant's friend, testified that defendant shot the victim in self defense. Reginald Davidson testified that while in the county jail with defendant, defendant confessed that he shot the victim. Defendant's brother and girlfriend presented alibi testimony on defendant's behalf. *People v. Jimmy Ray Lacy, Jr.*, unpublished PERCURIUM opinion of the Court of Appeals (Docket #295724; 3-15-2011).

This statement of facts is entitled to a presumption of correctness and deference. The trial facts presented by Mr. Lacy on direct appeal were as follows:

Marcus Moore, the decedent, died as the result of three gunshot wounds received while in the vicinity of Mr. Lacy's residence located at 121 W. Eldridge Street, Flint, Michigan, on July 20, 2008. Testimony indicates that decedent and his brother, Aaron Williams, were at Mr. Lacy's residence earlier in the evening allegedly to purchase some powder cocaine from Mr. Lacy, however, the sale was not completed. Decedent and his brother then left the Lacy residence drove around and each consumed a minimum of three (3) half pints of seagram's gin over an approximate 5 hour

period. Mr. Moore, intoxicated at this point, returned to Mr. Lacy's residence at approximately midnight leaving his brother and Bobby Idom in the vehicle while he approached the residence. Thereafter an argument ensued resulting in Marcus Moore's death. In the vicinity of Mr. Lacy's residence the lighting is poor at best. There was only one witness, decedent's brother Aaron Williams who indicated My. Lacy was the shooter. Mr. Williams immediately after the shooting called 911 and when first interviewed by police Sgt Legandye, identified the shooter as being heavier set light skinned wearing a Phoenix Suns basketball jersey. Mr. Lacy didn't fit the description, nor was he even present when the incident occurred. Mr. Williams further testified that when the decedent walked up near Mr. Lacy's residence, there were several people outside, the lighting was poor, and he was not paying attention to what decedent was doing but was laying back in the seat of the vehicle listening to music and conversing with the other person in the vehicle. There was further evidence that Mr. Lacy and the decedent knew each other prior to the incident and there was no signs or evidence of any "bad blood" between the two men.

Terrence Smith an alleged friend of defendant said he was present across the street from the residence at the time of the incident, but never came forward with any information, the night of the incident. After being arrested in connection of a breaking and entering of Mr. Lacy's home Smith and two other individuals. Smith claims to have saw the incident and witnessed the defendant in a struggle with three people. Smith also testified that the

only person he saw with a gun was the defendant. The prosecutor produced Reginald Davidson, an inmate at the Genesee County Jail who testified that Mr. Lacy confessed to him that he shot Marcus Moore. Davidson was a jailhouse informant who had been working with the Genesee County Prosecutors office and the details of his relationship with the Genesee County prosecutors office was never disclosed to Mr. Lacy. It should not go unnoticed by this court that after discovered evidence revealed that Reginald Davidson wrote a letter to Judge Farah while he was being sentenced, it was further revealed that the lead Detective, Roderick LeGardye also wrote a letter to the judge explaining how crucial Reginald Davidson's testimony and cooperation was in securing defendant's conviction. Those letters have never been disclosed and defendant contends that an evidentiary hearing would have proven that Reginald Davidson was in fact acting as an agent for the state. [See Appendix I] Additional details related to Mr.Davidson and to the issues presented are contained within the body of the issues. See appendix I-Q]

REASON FOR GRANTING THE PETITION

The reason for granting the petition for writ of certiori, is as followed. The Fourteenth Amendment to the United States Constitution guarantees that "[No State shall deprive any person of liberty. . . without due process of law. U.S. Const. Amend. XIV In *Brady v Maryland*, 373 U.S. 83 (1963), the Supreme Court invoked the Due Process Clause to hold that "the suppression of evidence favorable to an accused violates due process when the evidence is material irrespective of the good or bad faith of the prosecution." In *Giglio v United States*, 405 U.S. 150, (1972), the court treated impeachment material as the legal equivalent of exculpatory material and that when the reliability of a given witness may be determinative of guilt or innocence, the nondisclosure of evidence affecting the credibility of a witness falls within the *Brady* doctrine.

Reginald Davidson was a jailhouse informant and a star witness in Mr. Lacy's case. It was Mr. Davidson who testified that Mr. Lacy confessed his involvement in the shooting death of Marcus Moore on July 20, 2008. Mr. Davidson also stated although he was awaiting sentencing on a number of felony charges his plea was in no way affected by his testimony in Mr. Lacy's case and that he had no expectation of any sentence benefits as a result of his testimony in the Lacy trial. Davidson claimed his decision to testify was he just wanted to do the right thing. Contrary to Mr. Davidson claiming to want to do the right thing. Davidson wrote a

letter to A.P.A. Tamara Phillips of the Genesee County Prosecutors office. This letter was contained in the prosecutions file and contains reference to an order filed with Judge Farah's chambers. [See appendix I]

It violates due process for the prosecution to suppress favorable evidence. *Brady v. Maryland*, 373 U.S. 83 (1963). The individual prosecutor has a duty to learn of favorable evidence known to others acting on behalf of the government, *Kyles v Whitley*, 514 U.S. 419, 437 (1995), without regard to the good or bad faith of the prosecution, *United States v Agurs*, 427 U.S. 97, 110 (1976), constitutional errors arises from the character of the evidence, not the character of the prosecution. Evidence is favorable to the defense when it is either exculpatory or impeaching. *Giglio v. United States*, 405 U.S. 150, 154 (1972).

Relying on federal law, in *People v. Chenault*, 495 Mich.. 142, 150 (2014) the Michigan Supreme Court stated that a constitutional violation occurs (1) when the evidence was suppressed: (2) the evidence is favorable to the defense, and (3) the evidence is material. This standard does not require demonstration by a preponderance that disclosure of suppressed evidence would have resulted ultimately in the defendant's acquittal. *Kyles v. Whitley*, 514 US at 434.

Setting aside the good or bad faith of the prosecution, this evidence was suppressed. The letter by jailhouse informant Reginald Davidson was written prior to Mr. Lacy's trial. The letter was mailed to Tamara Phillips a member of the Genesee County Prosecuting Attorney's office. The letter asks that a copy

be provided to assistant prosecuting attorney David Mayes who was handling Mr. Lacy's trial. The letter was contained in Mr. Lacy's file held by the prosecution. The letter was not discovered until a FOIA request was made. The information was favorable to the defense. Not only did the jury not hear of this aspect of Mr. Davidson's motivation for testifying against Mr. Lacy, Mr. Davidson provided the jury with an entirely different and self promoting explanation for his informant testimony at Mr. Lacy's trial. This evidence along with additional material evidence was discovered through a 2017 FOIA request detailing the full extent of Davidsons relationship with the Genesee County Prosecutors office and the Feds. as well. [See appendix I-Q] The prosecution in the Lacy case violated Lacy's due process by suppressing favorable evidence.

For the state courts to say Mr. Lacy was aware of Davidsons status as a informant and was aware of his relationship with the Genesee County Prosecutors office is just mind boggling. When reviewing claims under Brady v Maryland, 373 US 83 (196), it is not only explicit agreements that must be disclosed but tacit agreements as well. Express or tacit either way there would be an agreement, it would be usable for impeachment and it would have been favorable to the defense. See Wisehart v. Davis, 408 F.3d 321, 323-324 (7th Cir. 2005) Mr. Lacy's jury "Did not know Davidson had a tacit agreement with the prosecution." Mr. Lacy's jury did not know DAvidson gave information that led to the conviction of the individual that robbed Lacy's trial judge's elderly mother Richard B. Yuille. "Where Yuille recused himself

off of Davidson's case. [See appendix Q]

The sixth amendment to the United States Constitution guarantees that in all criminal prosecutions, the accused shall have the assistance of counsel for his defense. U.S. Const. Amend. VI; see also Maine v Moulton 474 U.S. 159 (1976) (Acknowledging this right does not exist solely at trial but before trial as well when adversarial proceedings have begun. The letter Davidson wrote to the prosecutor along with the other evidence discovered through FOIA suggest Davidson was already a prosecution witness at the time he wrote the letter. The letter can only suggest and point to collusion between the prosecutor's team and jailhouse informant Reginald Davidson. [See appendix I, L]

The use of jailhouse informants is not only inherently unreliable, but when the information is elicited with the contrivance of the prosecution team there is a Sixth Amendment Violation. Mr. Lacy's Sixth Amendment right to counsel was violated by the introduction of incriminating statements obtained by jailhouse informant Reginald Davidson under Massiah v. United States, 377 U.S. 201 (1964), United States v Henry, 447 U.S. 264 (1980) and Ayers v Hudson 623 F.3d 301 6th Cir (2010). Although not dispositive to the issue the parties devote much argument to the question of whether Hutchinson acted as a government agent after he was returned to Ayers pod. In this regard we note that the Supreme Court has not formally defined the term government agent for the Sixth Amendment purpose. Some circuits employ a straight line rule, other circuits flatly reject this approach.

Petitioner request this court to define a government agent for the Sixth Amendment purpose and establish a consistent rule to be followed by all circuits.

The full details of informant Reginald Davidson's involvement with the Genesee County Prosecutor's office as an informant in Mr. Lacy's case and in many other cases was not provided to Mr. Lacy's counsel prior to trial and only came to light as a direct result of the FOIA response. [See appendix I-Q] Filed Post Conviction

For that reason alone Mr. Lacy should be granted a writ of certiori because given the centrality of testimony of the prosecutions star witness jailhouse informant Reginald Davidson and the strength of the suppressed impeached evidence if defendant Lacy had access to the letter and various letters and affidavits discovered detailing jailhouse informant Reginald Davidson's involvement with the prosecution. Defendant Lacy would have had both a reasonable probability of a different result or at least a reasonable likely chance of acquittal because the suppressed evidence undermined the prosecutions star witness testimony. The testimony that tied together the rest of the evidence which met the materiality threshold. [See appendix I-Q]

The states defense to the Davidson's letter is "even though defendant did not have the letter, the information contained in the letter was known by the defense." If one is to believe the state about the letter why wasn't it disclosed to the defendant and was only discovered almost a decade after defendants trial following a FOIA request.

In closing Jimmy Ray Lacy should be granted a writ of certiori

for the various Constitutional Violations he received.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jimmy R. Zantz

Date: 1-26-23