

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR GLADES COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.

Case No. 83-12

CARY MICHAEL LAMBRIX,
Defendant.

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GLADES COUNTY, FL.

STATE'S ANSWER TO SUCCESSIVE MOTION TO VACATE

COMES NOW, the State of Florida, by and through the undersigned attorneys, and hereby responds to the Successive Motion to Vacate Judgments of Conviction and Sentence with Special Request for Leave to Amend, filed by Defendant Cary Michael Lambrix in the above-styled case on or about April 13, 2009. The State respectfully submits that this Court should conduct a case management conference within 30 days of the filing of this Answer, as required by Florida Rule of Criminal Procedure 3.851(f)(5)(B), and thereafter enter an Order summarily denying the successive motion to vacate, and offers the following grounds:

FACTS AND PROCEDURAL HISTORY

The facts are outlined in the initial Florida Supreme Court opinion on direct appeal:

On the evening of February 5, 1983, Lambrix and Frances Smith, his roommate, went to a tavern where they met Clarence Moore, a/k/a Lawrence Lamberson, and Aleisha Bryant. Late that evening, they all ventured to Lambrix's trailer to eat spaghetti. Shortly after their arrival, Lambrix and Moore went outside. Lambrix returned about twenty minutes later and requested Bryant to go outside with him. About forty-five minutes later Lambrix returned alone. Smith testified that Lambrix

was carrying a tire tool and had blood on his person and clothing. Lambrix told Smith that he killed both Bryant and Moore. He mentioned that he choked and stomped on Bryant and hit Moore over the head. Smith and Lambrix proceeded to eat spaghetti, wash up and bury the two bodies behind the trailer. After burying the bodies, Lambrix and Smith went back to the trailer to wash up. They then took Moore's Cadillac and disposed of the tire tool and Lambrix's bloody shirt in a nearby stream.

On Wednesday, February 8, 1983, Smith was arrested on an unrelated charge. Smith stayed in jail until Friday. On the following Monday, Smith contacted law enforcement officers and advised them of the burial.

A police investigation led to the discovery of the two buried bodies as well as the recovery of the tire iron and bloody shirt. A medical examiner testified that Moore died from multiple crushing blows to the head and Bryant died from manual strangulation. Additional evidence exists to support a finding that Lambrix committed the two murders in question.

Lambrix v. State, 494 So. 2d 1143, 1145 (Fla. 1986).

Lambrix has litigated a number of collateral challenges to the convictions and death sentences imposed in this case, which have been consistently rejected. See Lambrix v. Dugger, 529 So. 2d 1110 (Fla. 1988) (denial of state habeas); Lambrix v. State, 534 So. 2d 1151 (Fla. 1988) (affirming summary denial of motion for postconviction relief during warrant); Lambrix v. State, 559 So. 2d 1137 (Fla. 1990) (affirming denial of state habeas); Lambrix v. Singletary, 641 So. 2d 847 (Fla. 1994) (denial of state habeas); and Lambrix v. State, 698 So. 2d 247 (Fla. 1996) (affirming summary denial of successive motion for postconviction relief), cert. denied, 522 U.S. 1122 (1998); Lambrix v. Singletary, 72 F.3d 1500 (11th Cir. 1996) (affirming denial of federal habeas relief following evidentiary hearing), aff'd., 520 U.S. 518 (1997).

Lambrix has now filed another successive motion to vacate, asserting that he has received documents generated by the Florida Department of Law Enforcement (FDLE) which have never previously been provided to the defense. This Answer is offered in

response to his allegations, pursuant to Florida Rule of Criminal Procedure 3.851(f)(3)(B).

RESPONSE TO ALLEGATIONS FOR RELIEF

CLAIM I

CONSTITUTIONALITY OF ACCESS TO PUBLIC RECORDS

Lambrix initially claims that he is being denied his constitutional rights because the procedures required by Section 119.19, Florida Statutes,¹ and Florida Rule of Criminal Procedure 3.852 impermissibly restrict his access to public records. This claim must be summarily denied as procedurally barred and without merit.

Since this claim only challenges the facial validity of an existing rule and statute, Lambrix could have presented this claim previously. His current motion provides generally in a footnote that "claims in this motion were not raised in the former motions because the documents from FDLE upon which the instant claims are predicated were not previously provided to counsel for Mr. Lambrix" (Motion, p. 4, n. 2). This explanation is clearly insufficient as applied to Lambrix's first issue, since Claim I is not based on any newly provided information. The challenged rule and statute did not even exist at the time the FDLE documents at issue were created.

To the extent that Lambrix claims that the new disclosure suggest prior violations of public records laws, he fails to allege or identify any specific violation of Rule 3.852 or §119.19 in the instant case. In fact, these authorities were enacted after the convictions and sentences against Lambrix were final, and Lambrix has never invoked either authority to secure any public records. Rather than asserting that these provisions have

¹ Section 119.19 was transferred to Section 27.7081 effective Oct. 1, 2005.

been violated, Lambrix attacks Rule 3.852 and §119.19 facially, claiming that they unconstitutionally restrict his access to public records. However, because his facial attack does not rely on any newly discovered information, it is procedurally barred, and must be denied.

Even if considered on the merits, Lambrix's claim presents no basis for relief. He merely asserts that the rule and statute are unconstitutional because he received documents in 2008 that were generated by FDLE during the pretrial investigation of this case and were not previously provided. He has not asserted that Rule 3.852 or §119.19 required the documents to have previously been disclosed. He notes that the FDLE disclosed 696 documents to his defense in 1987, but neglects to specify what was requested and what was provided at that time. He has not alleged that he requested public records in 1987 which should have been disclosed, but were not. Such an allegation would require Lambrix to disclose which records he requested and what he received in response to his request.

Even if Lambrix did assert that disclosure was previously required, his factual allegations would only demonstrate a failure to follow the rules, and not the unconstitutionality of the rules themselves. He makes no specific claim or legal analysis to support his current claim of facial unconstitutionality. Thus, his claim is clearly insufficient. In addition, the Florida Supreme Court expressly acknowledged the constitutionality of Rule 3.852 upon its adoption. In re Amendment to Fla. Rules of Crim. Procedure-Capital Postconviction Pub. Records Prod., 683 So. 2d 475, 475-476 (Fla. 1996).

To the extent Lambrix is suggesting error because FDLE documents should have been provided to prior collateral counsel, he does not offer any viable postconviction claim. See Elledge, 911 So. 2d at 66, n. 10 (finding postconviction counsel's ignorance of report to be of no moment, since Brady focuses on suppression from trial counsel only).

Lambrix does not request an evidentiary hearing within this claim, but concludes his argument by requesting "permission to formally seek production of the FDLE laboratory records" pursuant to Rule 3.852 (Motion, p. 13). However, he does not need this Court's "permission" to invoke Rule 3.852. See Tompkins v. State, 872 So. 2d 230, 244 (Fla. 2003). Moreover, Lambrix has no basis to suggest that more FDLE records may exist. As he has not explicitly delineated the records sought and the purpose the records would serve, no hearing is necessary on this issue. Cook v. State, 792 So. 2d 1197, 1204 (Fla. 2001); Downs v. State, 740 So. 2d 506, 510-11 (Fla. 1999).

As this claim could have been brought previously and has been rejected by the Florida Supreme Court, this Court must summarily deny the issue as procedurally barred and without merit.

CLAIM II

VIOLATION OF BRADY V. MARYLAND AND GIGLIO V. UNITED STATES BASED ON FAILURE TO DISCLOSE FDLE LAB NOTES

Lambrix next asserts that he is entitled to a new trial because the State allegedly violated Brady v. Maryland, 373 U.S. 83 (1963), and Giglio v. United States, 405 U.S. 150 (1972), by failing to disclose FDLE lab notes from the 1983 pretrial investigation. This claim is facially insufficient, and subject to summary denial.

In order to demonstrate a Brady violation, a defendant must show that (1) favorable evidence was (2) suppressed by the State and was (3) material to the case, meaning the withholding of the evidence prejudiced the defense. Riechmann v. State, 966 So. 2d 298, 307 (Fla. 2007); Elledge v. State, 911 So. 2d 57, 63 (Fla. 2005). It is Lambrix's burden to establish each of these elements. Archer v. State, 934 So. 2d 1187, 1202 (Fla. 2006); Duckett v. State, 918 So. 2d 224, 235 (Fla. 2005). He cannot establish any element on the facts of this case.

The State disputes Lambrix's claim that the FDLE documents provided to his researcher, Mr. Hickey, had never been previously provided to the defense. However, the State acknowledges that, in order to summarily deny the motion, this Court must accept Lambrix's allegations as true. Therefore, the State will not dispute the element of suppression at this time. However, should this Court grant an evidentiary hearing on this motion, the State will demand proof of any suppression at the hearing.

Even given the element of suppression, and Lambrix's claim that he never previously received these documents, no Brady relief is warranted because the other two elements cannot be proven on the facts as alleged. The "new" FDLE documents are not favorable to Lambrix; they are neither exculpatory nor impeaching. They do not suggest Lambrix's innocence or implicate anyone else's guilt. Although Lambrix makes a conclusory claim about using the documents for possible impeachment of state witnesses, he does not identify any relevant witnesses² or the basis for any impeachment. Lambrix's

² At one point, Lambrix claims that Deborah Hanzel and Frances Smith-Ottinger could have been impeached with this material (Motion, p. 15). However, since neither of these witnesses testified about FDLE documents or the lab testing of evidence, there would be no basis for impeachment of these witnesses by any of these documents. Lambrix does not identify any particular information that would be useful to impeach the State's case.

suggestion that this information may have been used to impeach state witnesses, without identifying the nature of the impeachment, is insufficient. Pardo v. State, 941 So. 2d 1057, 1066-67 (Fla. 2006) (noting skepticism that impeachment of search warrant affidavit could implicate Brady, as confidence in conviction must be undermined). He does not explain the impact this information could have had on the trial, or provide any basis to believe that he would not have been convicted if his defense team had this information prior to trial.

The FDLE documents are not probative of Lambrix's innocence, nor do they "impeach" Smith-Ottinger's testimony as to how the crime occurred. Lambrix clearly cannot meet his burden of demonstrating that the lab case notes are favorable to the defense on the facts of this case. See Kelley v. State, 34 Fla. L. Weekly S 43 (Fla. Jan. 22, 2009) (undisclosed evidence disposition forms were not favorable where they did not exonerate the defendant or implicate someone else, and contained no useful impeachment information); Elledge, 911 So. 2d at 63-64 (undisclosed EEG report was not favorable where results showed no abnormality; speculation that defense expert could have mined report for mitigation insufficient); Maharaj v. State, 778 So. 2d 944, 953 (Fla. 2000) (no showing that information that victims had purchased life insurance policies was favorable to defense, where it did not tend to negate guilt); Sireci v. State, 773 So. 2d 34, 41-42 (Fla. 2000) (Brady claim summarily denied where property receipt showing sheriff's office received denim jacket from Las Vegas Police did not support defense theory that two jackets were seized).

While Lambrix asserts that his postconviction experts could use the FDLE documents to bolster their criticisms of the State's investigation and case presentation,

this does not infer any materiality for trial purposes. Elledge, 911 So. 2d at 66, n. 10 (failure to disclose information in postconviction does not implicate Brady). Lambrix's claim that the trial attorneys may have used the evidence at trial is similarly unpersuasive; without explaining how, Lambrix contends that his attorney could have used these documents to support a challenge to the chain of custody, to let the jury know that the prosecution had provided direction to the forensics lab about what evidence to test, and to question the return of evidence to a witness without proper inventory controls. None of this information in any way suggests that Lambrix is innocent. In short, Lambrix cannot demonstrate that any new FDLE documents are favorable to his defense, and therefore his motion must be summarily denied.

Lambrix's assertion of a Giglio violation provides no facts. Giglio provides that the State cannot knowingly present false or misleading evidence. Lambrix has not identified any evidence admitted against him at trial which was false or misleading, and has not identified any "new" document which demonstrates any false or misleading evidence. His failure to assert any allegations in support of a Giglio claim renders his motion insufficient and subject to summary denial on this issue.

On the facts of this case, Lambrix cannot establish that any information from any new FDLE documents was favorable to the defense. The lab case notes do not suggest that Lambrix did not commit these murders and they are not inconsistent with any testimony presented at Lambrix's trial. Because the allegations are insufficient to demonstrate that any newly discovered documents could be exculpatory or useful for impeachment, this claim is insufficient and must be denied without an evidentiary hearing.

CLAIM III

ANY SUPPRESSED EVIDENCE WAS IMMATERIAL TO THE CASE

Lambrix's last issue attempts to demonstrate the materiality element of a Brady analysis. According to Lambrix, these documents are material to his case because he would probably have been acquitted had his attorneys had this information. This is simply a conclusory statement that the standard has been met, and fails to offer any reasonable suggestion of a different outcome.

As previously noted, the element of materiality requires a defendant to show there would be a reasonable probability of a different outcome had the Brady information been disclosed prior to trial. Nixon v. State, 932 So. 2d 1009, 1019 (Fla. 2006). "The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." United States v. Agurs, 427 U.S. 97, 109-10 (1976). This standard looks to determine whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. Guzman v. State, 868 So. 2d 498, 508-09 (Fla. 2003); Strickler v. Greene, 527 U.S. 263, 290 (1999). Again, it is Lambrix's burden to establish materiality, or prejudice. Archer, 934 So. 2d at 1202; Duckett, 918 So. 2d at 235.

There has been no allegation that the FDLE documents themselves could or would have been admissible at trial. Inadmissible evidence can rarely, if ever, meet the standard for materiality. Gilliam v. Secretary, Department of Corrections, 480 F. 3d 1027, 1032-33 (11th Cir. 2007); Breedlove v. Moore, 279 F. 3d 952, 964 (11th Cir. 2002). The only potential relevance Lambrix has identified is the speculation that, had these documents

been available, his trial attorneys may have been able to use them at trial. Such speculation is facially insufficient to support a Brady claim. Elledge, 911 So. 2d at 64; LeCroy v. Dugger, 727 So. 2d 236 (Fla. 1998) (Brady claim summarily denied where defense only offered conjecture about meaning of letters and notes). Again, Lambrix's assertion that this information may have been used for impeachment, without identifying the nature of the impeachment, is insufficient to suggest materiality.

On the facts of this case, Lambrix cannot establish the materiality of any of the information contained in any new FDLE documents. Therefore, his motion must be summarily denied.

RESPONSE TO REQUEST FOR EVIDENTIARY HEARING

No evidentiary hearing is necessary on this successive motion to vacate. A successive motion can be summarily denied where the motion, files, and records conclusively show that the movant is entitled to no relief. Fla.R.Crim.P. 3.851(f)(5)(B). This standard is met where, as here, the defendant fails to present a legally sufficient claim. Kelley, 34 Fla. L. Weekly S 43 (Fla. Jan. 22, 2009) (affirming summary denial of Brady claim); Nixon, 932 So. 2d at 1018 (same). As this Answer has demonstrated, Lambrix's claim is not legally sufficient and therefore must be summarily denied.

Lambrix's motion includes a witness list with 32 individuals purportedly "available should an evidentiary hearing be scheduled to testify under oath to the facts alleged in the motion" (Motion, pp. 5-8). Although undersigned counsel are both listed as potential witnesses, we were never contacted about our knowledge or availability as is implied. A review of the witness list suggests that many of the purported witnesses would not have any knowledge of the FDLE documents at issue, and presumably these individuals

similarly were never contacted about their knowledge or availability for any evidentiary hearing. At the case management conference, Lambrix's attorneys should be prepared to identify the relevant knowledge and availability of any potential witnesses, so that this Court can make an informed decision as to whether an evidentiary hearing would serve any purpose on the facts of this case.

RESPONSE TO REQUEST FOR LEAVE TO AMEND

The successive motion, as filed, purports to be incomplete and subject to further amendment. However, the current rules governing capital postconviction proceedings require the filing of a final motion rather than the filing of a motion to be amended. Lambrix does not offer any explanation or authority to support his filing of an "incomplete" motion. He identifies a perceived need to pursue public records and to interview potential witnesses, but fails to explain why he has not already initiated any such necessary investigation. The State has not attempted to interfere or preclude Lambrix's attorneys from investigating any potential claim, and neither has this Court. He does not need this Court's permission to pursue public records under Rule 3.852 or to speak with FDLE witnesses. The time for investigation is BEFORE a motion to vacate is filed, so that the motion may fully present the relevant factual allegations. If the current motion is incomplete, the remedy for the defense is to withdraw the premature motion, investigate any potential claim, and then file any necessary motion once the facts have been investigated and the movant can swear to the factual claims. Because the pending motion for leave to amend contradicts with this established and codified practice, the request to amend is, at best, premature, and must be denied. See generally, Doorbal v. State, 983 So. 2d 464, 484 (Fla. 2008) (upholding denial of untimely motion to amend);

Bryant v. State, 901 So. 2d 810, 818-19 (Fla. 2005) (discussing need for fully pled motion upon filing).


CONCLUSION


Lambrix's successive motion to vacate is facially insufficient and subject to summary denial. This Court must schedule a case management conference to be held within 30 days of the filing of this Answer, and thereafter enter an Order summarily denying all relief.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered to: the Hon. R. Thomas Corbin, Circuit Judge, Lee County Justice Center, 1700 Monroe St., Fort Myers, Florida, 33901; to William M. Hennis, III, Capital Collateral Regional Counsel - South, 101 N.E. 3rd Ave., Suite 400, Ft. Lauderdale, Florida, 33301; and to Cary Michael Lambrix, DC # 482053, Union Correctional Institution, 7819 N.W. 228th Street, Raiford, Florida 32026-4440, this 28 day of April, 2009.

Respectfully submitted,


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