

District Court, Larimer County, Colorado Court Address: 201 LaPorte Avenue, Fort Collins, CO	
THE PEOPLE OF THE STATE OF COLORADO Plaintiff v. TIMOTHY MASTERS Defendant	Δ COURT USE ONLY Δ
Collins, Liu & Lyons, L.L.P. Maria Liu #29575 812 8 th Street Greeley, CO 80631 Phone: (970) 336-6499 Fax: (970) 353-0214 David D. Wymore, P.C. David Wymore #7482 3855 N. 26 th Street Boulder, CO 80304 Phone & Fax (303) 447-0340	Case Number: 98CR1149 Division: 4C
THE STATE'S PROPOSED FACTUAL STIPULATIONS ARE PRIMARILY DESIGNED TO PROTECT THE TRIAL PROSECUTORS AND ARE THUS A WASTE OF THE COURT'S AND TIM MASTERS' TIME. THE COURT SHOULD GRANT IMMEDIATE RELIEF TO TIM MASTERS (50)	

1. The State's proposed factual stipulations are primarily designed to protect the trial prosecutors and are thus a waste of the court's and Tim Masters' time.
2. The court should immediately grant Tim Masters relief in light of the State's belated admission that Crim. P. 16 was violated. The State's failure to acknowledge that inevitable result and the State's determination to cause needless delay by insisting that the trial prosecutors be afforded a forum for their irrelevant proclamations of good faith, are indefensible. The State's admission that Crim. P. 16 was violated only follows weeks of overwhelming, undisputable evidence to that effect. The State suggests no relevant reason to continue proceedings.
3. Overwhelming evidence already shows that the information existed yet was not provided to Tim Masters before trial, and that it was material under the applicable legal standards. Trial defense counsel have provided undisputable factual and expert opinion evidence on those points, and the trial prosecutors are in no position to testify to the contrary on either the factual or expert aspects of those issues.
4. Given the undeniably exculpatory substance of the information which the State concedes was not provided to Tim Masters before trial, the court should grant Tim Masters

immediate relief. There is no reason to wait until the trial prosecutors have been afforded a soapbox.

5. Unless the State proposes to present persuasive, relevant evidence that the information was not material, an extremely unlikely occurrence, the court should immediately grant Tim Masters' postconviction motion and vacate his conviction. Certainly, the trial prosecutors and Mr. Broderick are not going to provide such testimony. The trial prosecutors have already made statements which essentially concede the materiality issue, namely that the State's case against Tim Masters was not strong.

6. Tim Masters should not be required to spend another day in prison because the present prosecutors endeavor to protect the trial prosecutors in ways that have nothing to do with whether Tim Masters should be granted relief. **For example:** whether the trial prosecutors had actual possession or knowledge of the information is irrelevant. Their failure to perform their duty under the U.S. and Colorado Constitutions and Crim. P. 16 is not a defense to anything in the present legal context. Why they failed to perform their duty is irrelevant.

Meloy's extractions:

7. Tim Masters accepts the stipulation that trial defense counsel never received the extractions from the prosecuting attorney in discovery, since there is overwhelming, undisputed evidence to that effect already in the record.

8. Whether the trial prosecutors physically obtained the extractions – or any other information at issue – is irrelevant because the trial prosecutors were legally obligated under Crim. P. 16 and the Due Process Clauses to both obtain the information from whomever had it, and to then provide the information to Tim Masters before trial. U.S. Const. amend. XIV; Colo. Const. art. II, § 25; *Kyles v. Whitley*, 514 U.S. 419, 438 (1995).

In order to comply with *Brady*, therefore, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police." *Kyles*, 514 U.S. at 437.

Stickler v. Greene, 527 U.S. 263, 281 (1999).

A *Brady* violation occurs when the government fails to disclose evidence materially favorable to the accused. *See* 373 U.S., at 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215. This Court has held that the *Brady* duty extends to impeachment evidence as well as exculpatory evidence, *United States v. Bagley*, 473 U.S. 667, 676, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985), and *Brady* suppression occurs when the government fails to turn over even evidence that is "known only to police investigators and not to the prosecutor," *Kyles*, 514 U.S., at 438, 115 S. Ct. 1555, 131 L. Ed. 2d 490. *See id.*, at 437, 115 S. Ct. 1555, 131 L. Ed. 2d 490 ("[T]he individual prosecutor has a duty to learn of any favorable evidence known to the

others acting on the government's behalf in the case, including the police"). "Such evidence is material 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different,'" *Strickler v. Greene*, 527 U.S. 263, 280, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999) (quoting *Bagley*, *supra*, at 682, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (opinion of Blackmun, J.)), although a "showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal," *Kyles*, 514 U.S., at 434, 115 S. Ct. 1555, 131 L. Ed. 2d 490. The reversal of a conviction is required upon a "showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Id.*, at 435, 115 S. Ct. 1555, 131 L. Ed. 2d 490.

Youngblood v. West Virginia, 547 U.S. 867, 126 S.Ct. 2188, 2190 (2006):

9. The failure of the trial prosecutors to perform that legal duty is the issue. The proposed stipulation that the trial prosecutors never actually obtained the "extractions" is irrelevant and appears designed to protect the trial prosecutors in other proceedings. It is also implausible to the point of incredibility. In any case, there is no factual basis for any stipulation to that effect.

1988 surveillance:

10. Tim Masters accepts the stipulation that an extensive law enforcement surveillance of the defendant, the scene where Ms. Hettrick's body was located and the grave site, occurred in February, 1988, and that "information regarding the enhanced surveillance was not provided to the defense" since there is overwhelming, undisputed evidence to that effect already in the record.

11. Whether the trial prosecutors physically obtained the documents is irrelevant since the trial prosecutors were legally obligated under Crim. P. 16 and the due process clauses to provide the information to Tim Masters before trial. The failure of the trial prosecutors to perform that legal duty is the issue, and the State has conceded that point. The proposed stipulation that the trial prosecutors never actually obtained the information appears designed to protect the trial prosecutors in other proceedings. It is also implausible. In any case, there is no factual basis for any stipulation to that effect.

12. The assertion that "the fact that the defendant did not react adversely" was discovered to original trial counsel is at best misleading since, absent the information about the psychological experiment itself, the absence of an "adverse reaction" was largely meaningless.

13. Tim Masters does not agree that the location where Ms. Hettrick's body was found was the "crime scene" as alleged by the State at trial; the expert witness on whom the State relied to establish that issue at trial, having been provided by Tim Masters with more

complete information than the State provided him before trial, now opines that Ms. Hettrick was likely killed elsewhere, as do other expert witnesses of whom the court and State are aware.

14. The proposed stipulation that the trial prosecutors never actually obtained the information is irrelevant and appears designed to protect the trial prosecutors in other proceedings. It is also implausible. In any case, there is no factual basis for any stipulation to that effect.

Dr. Tsoi's opinions.

15. This instance again demonstrates the essential worthlessness of the State's actions in the present legal context.

16. Insofar as the State agrees with the overwhelming, undisputed evidence that Dr. Tsoi rendered statements and opinions concerning the case based on information provided by the police, and that those statements and opinions were not provided to Tim Masters before trial, Tim Masters accepts the State's proposed stipulation.

17. The proposed stipulation that the trial prosecutors never actually obtained the information is irrelevant and appears designed to protect the trial prosecutors in other proceedings. It is also implausible. In any case, there is no factual basis for any stipulation to that effect.

18. The assertion that Reed never recorded Dr. Tsoi's statements is contrary to Reed's recorded statements.

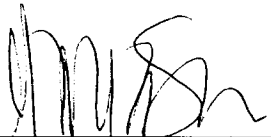
Hazelwood's scathing critique of Meloy's and the prosecutions' theories.

19. Since there is overwhelming evidence to that effect, Tim Masters accepts the stipulation that Broderick conferred with Hazelwood about this case, including the arrest warrant, and that the prosecuting attorneys failed to provide trial defense counsel with Broderick's notes and reports.

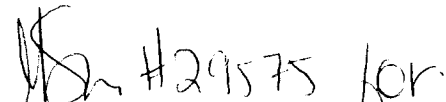
20. The proposed stipulation that the trial prosecutors never actually obtained the information is irrelevant and appears designed to protect the trial prosecutors in other proceedings. It is also implausible to the point of incredibility. In any case, there is no factual basis for any stipulation to that effect.

21. The State pretends that Dr. Hammond did not exist, but its failure to propose a stipulation to the indisputable facts that the information relating to Hammond existed and that several police officers found it powerfully relevant to the Hettrick homicide cannot change that evidence, any more than it can change the fact that the prosecution burned up the Hammond evidence.

WHEREFORE, Mr. Masters moves for immediate relief and requests this Court immediately grant him a new trial given the prosecution's admission. In addition, Mr. Masters requests bond be set in accordance with the weight of the evidence given the entire record, including postconviction testimony.



Maria Liu, No. 29575



David D. Wymore, No. 7482

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was deposited into the United States mail, with sufficient first class postage prepaid, this _____ day of _____, 2008, addressed to:

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