

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-9515
Conference Calendar

ANDREW JOSEPH, JR.,

Petitioner-Appellant,

versus

JOHN P. WHITLEY, Warden,
Louisiana State Penitentiary, and
RICHARD P. IEYOUB, Attorney General,
State of Louisiana,

Respondents-Appellees.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-92-2335 "M"
- - - - -
(December 14, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Andrew Joseph argues that he was denied due process because the prosecutor suppressed a police report and the results of a blood analysis. "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

prosecution." Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). To establish that evidence falls within the purview of Brady, a petitioner must establish that the evidence was (1) suppressed, (2) favorable, and (3) material. Smith v. Black, 904 F.2d 950, 963 (5th Cir. 1990), cert. denied, 112 S.Ct. 1463 (1992) (citation omitted). Evidence is material if a reasonable probability exists 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, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). "A `reasonable probability' is a probability sufficient to undermine confidence in outcome." Id. at 682. This Court has recognized that information contained in police reports may be subject to Brady's requirements. Lindsey v. King, 769 F.2d 1034, 1041-43 (5th Cir. 1985); see also Williams v. Whitley, 940 F.2d 132, 134 (5th Cir. 1991) (habeas petitioner was entitled to evidentiary hearing on whether police report of murder was known to defense counsel at time of trial because report had impeachment value).

Trial testimony established that, even had the police report been disclosed, the evidence of Joseph's guilt was sufficiently strong that no reasonable probability exists that disclosure of the police report would have rendered a different result in Joseph's trial. Thus, the report was not Brady material, and the prosecutor's failure to disclose it did not violate Joseph's constitutional rights.

Likewise, the results of the blood analysis were not favorable to Joseph or material to his guilt. The lab report

shows that blood samples were taken not only from the window shade, but from the bedspread, bedsheet, a blouse, a piece of paper, and a man's shirt. All of the samples were Type "O" blood. Because the victim was stabbed in the bedroom, the logical conclusion is that the blood was that of the victim, not the murderer's. Disclosure of the lab report was therefore, not favorable to Joseph.

Additionally, given the trial evidence which includes the presence of Joseph's fingerprints at the point of entry and his inculpatory statement to Butler, no "reasonable probability" that the outcome of Joseph's trial would have been different exists. Joseph fails to show that the lab report was Brady material and that its alleged nondisclosure violated his constitutional rights.

The judgment is AFFIRMED.