12TH JUDICIAL DISTRICT COURT
PARISH OF AVOYELLES
STATE OF LOUISIANA

VINCENT SIMMONS
Petitioner

CASE No. 37,596

Versus

DARREL VANNOY, Warden
Louisiana State Penitentiary

FILED:_____ _____
DEPUTY CLERK

MOTION FOR SUMMARY JUDGMENT AND WRIT OF MANDAMUS. SEE La. CCRP § 930.3(1); La. CCP § 966; La. CCP § 3862.

NOW INTO COURT, through undersigned counsel, comes Petitioner Vincent Simmons, DOC #85188, respectfully submitting this memorandum of law in support of Mr. Simmons' motion for summary judgment and writ of mandamus with respect to POINT V: THE STATE COMMITTED BOTH BRADY AND JENCKS ACT VIOLATIONS. La. CCRP 930.3(1) mandates that the Court grant Mr. Simmons' petition in its entirety due a constitutional violation, thereby ordering a new trial.[1] This Court is compelled to act immediately to remedy the constitutional violations in this case.[2] The following will support that there is no material question of fact to be answered with regard to the constitutional violation, and the continued incarceration of Mr. Simmons violates the 8th and 14th Amendments. The continued litigation in its present state is only procedural at this point and the vacatur of his conviction is only being delayed by pointless litigation. As such, this Court must vacate Mr. Simmons' conviction so that justice will not be delayed any longer.[3]

On August 2, 2021, this Court held a hearing to determine whether it should vacate its recusal of the Avoyelles Parish District Attorney's Office. See Exhibit A – Court minutes dated

---

[1] Mr. Simmons also submits that, under the theory of newly discovered evidence, which was POINT III of his brief, this Court should order a new trial immediately.

[2] Essentially, Mr. Simmons, because he did not receive a fair trial, should be in a pretrial posture where he is presumed to be innocent. Therefore, Vincent is sitting in prison as an innocent man.

[3] Any allegation that Eddie Knoll is a witness that could dispute Michael Kelly's testimony will be addressed below. Eddie Knoll's appearance in Shadows of Doubt, the 1999 documentary on Simmons' case all but confirms that Knoll *did not provide discovery to* Harold Brouillette. See Exhibit C – DVD excerpt of Shadows of Doubt.

August 2, 2021. In its decision to uphold the recusal of the Avoyelles Parish District Attorney's Office, this Court held "it appears that here is some constitutional rights of Mr. Simmons that without question were violated…[m]ore so than ever am I convinced now after researching for this that Mr. Riddle is in a situation to where he knows there's a Brady violation, best of his knowledge from all evidence presented to date there's a Brady violation." See Exhibit A.

Here, as described by the Court on August 2, 2021, Mr. Simmons' has suffered a severe constitutional violation that can only be remedied by a new trial based upon the May 21st hearing testimony of Avoyelles Parish District Attorney Charles Riddle and attorney Michael Kelly. See Exhibit A; see Exhibit B – Court minutes dated May 21, 2021. Michael Kelly testified that he was Vincent's co-counsel at trial and did not even know that there was a line up in this case, let alone all of the statements provided by the witnesses. Charles Riddle acknowledged that the State failed to provide defense counsel with *any* discovery prior to trial. This Court's ruling on August 2, 2021, is law of the case: there was a clear constitutional violation that requires a new trial.

THE LAW

The requirements for a motion for summary judgment, pursuant to CCP § 966, are as follows:

> (1) A plaintiff's motion may be filed at any time after the answer has been filed. A defendant's motion may be filed at any time.
>
> (2) The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, except those disallowed by Article 969. The procedure is favored and shall be construed to accomplish these ends.
>
> (3) After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law.
>
> (4) The only documents that may be filed in support of or in opposition to the motion are pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions. The court may permit documents to be filed in any electronically stored format authorized by court rules or approved by the clerk of the court.

In the instant case, because the Louisiana Post-Conviction Hearing Act is a civil matter, the Louisiana Code of Civil Procedure applies. Here, the State has answered Mr. Simmons' petition, both substantively and procedurally on November 4, 2020 and December 1, 2020. On May 21, 2021, Mr. Simmons and the State took witness testimony before this Court that conclusively proved that Mr. Simmons' right to discovery and a fair trial were violated.

Because of this constitutional violation, this Court must act immediately. While Mr. Simmons has a post-conviction petition pending, based upon the procedural posture of this case, he may have to wait years before any relief may be granted by this Court without undertaking any emergency measures. Here, there are no questions of fact left to be resolved based upon the

discovery violation in this case. As such, a writ of mandamus is appropriate and may be filed in any proceeding where the delay involved in obtaining ordinary relief may cause injustice. See La. CCP § 3862.

The Brady and Jencks Standard

The Brady standard was established in 1963. In Strickler v. Greene, 527 U.S. 263, 280-82 (1999), the Court summed up its Brady jurisprudence by opining that there are three "essential elements of a Brady violation," namely (i) suppression, (ii) of favorable evidence, (iii) that is material to guilt or punishment. This formulation, as well as the Bagley/Kyles definition of materiality, has been reiterated in numerous subsequent Supreme Court decisions. See, e.g., Wearry v. Cain, 136 S. Ct. 1002, 1006-07 (2016) (finding Brady violation where prosecutor failed to disclose impeachment evidence concerning the witness who provided "the only evidence directly tying [Wearry] to [the] crime" of which he was convicted, even though other impeachment evidence was available); Smith v. Cain, 566 U.S. 73, 75-76 (2012) (Brady violation occurred where impeachment evidence was withheld concerning the only eyewitness to the crime); see generally Cone v. Bell, 556 U.S. 449, 469-70 (2009) (summarizing the Brady standard); Banks v. Dretke, 540 U.S. 668, 698-99 (2004) (same).

Jencks Act: Pursuant to 18 U.S.C. § 3500(b), the prosecution must produce, no later than the close of direct examination of any prosecution witness, ":any statement… of the witness in the possession of the [State] which relates to the subject matter at which the witness has testified." The term "statement" includes (i) written statements signed or otherwise adopted or approved by the witness; (ii) stenographic, mechanical, electric or other recordings, or transcriptions thereof, which are "substantially verbatim recital[s]" of oral statements made by the witness; and (iii) grand jury testimony however taken or recorded. See 18 U.S.C. § 3500(e).

Although the Jencks Act is a federal statute, the courts of Louisiana have cited and relied upon it in determining what statements are to be disclosed. See State v. Clark, 581 So. 2d 747, 754 (La. App. 1991); State v. Banks, 446 So. 2d 497, 501 (La. App. 1984); accord State v. Duncan, 648 So. 2d 1090, 1098 (4th Cir. 1994) (noting that "this court applied the standards of the Jencks Act" to determine what exculpatory statements must be disclosed).

In a failure to disclose exculpatory material or prior statements, the State may not claim that open file discovery remedied the failure to produce the discovery items to defense, as the State must turn over the particular items that are exculpatory. See State v. Ballard, 2021 La. App. LEXIS 1136, *45 (La.App. 4 Cir. July 21, 2021); United States v. Gil, 297 F.3d 93, 105-107 (2d Cir. 2002); cf. United States v. Garza, 2007 U.S. Dist. LEXIS 113175

Finally, even if the files that the State failed to turn over were not in the prosecutor's file, but in the police file, the actions of the police are imputed to the prosecutor, as the prosecutor should have had access to the police file. Kyles v. Whitley, 514 U.S. 419, 435-441 (1995). A prosecutor's duty to disclose does not end with a jury's verdict but, instead, the prosecutor remains bound by the ethics of his office even after a conviction "to inform the appropriate authority of after acquired or other information that casts doubt upon the correctness of the conviction." State v. Ballard, 2021 La. App. LEXIS 1136, *51 (citing State v. Pierre, 125 So.3d 403, 410 (La. 2013) (citation omitted)).

Newly Discovered Evidence Standard

In Louisiana, "[a] defendant seeking a new trial based on newly discovered evidence must establish four elements: (1) that the new evidence was discovered after trial; (2) that failure to discover the evidence before trial was not attributable to his lack of diligence; (3) that the evidence is material to the issues at trial; and (4) that the evidence is of such a nature that it would probably produce a different verdict in the event of retrial." State v. Cavalier, 701 So. 2d 949, 951 (La. 1997). "In ruling on the motion, the trial judge's duty is not to weigh the evidence as though he were a jury determining guilt or innocence, rather his duty is the narrow one of ascertaining whether there is new material fit for a new jury's judgment." Id., quoting State v. Prudholm, 446 So. 2d 729, 736 (La. 1984).

A court weighing a newly discovered evidence motion cannot deny the motion simply on the basis that the evidence presented by the State was legally sufficient to convict; instead, in weighing the newly discovered evidence against the proof at trial, it must determine whether the trial evidence "appears strong enough to support a conclusion that the newly discovered evidence probably would not have changed the verdict, when one considers the newly discovered evidence that would be presented at a new trial." Cavalier, 701 So. 2d at 752.

ARGUMENT

THIS COURT'S AUGUST 2, 2021 RULING IS THE LAW OF THE CASE REQUIRING IMMEDIATE VACATUR OF MR. SIMMONS' CONVICTION.

Here, the Court ruled that the evidence to date presented overwhelming support for Mr. Simmons' claims that there were Brady and Jencks Act violations. Mr. Riddle was recused by this Court because he refused to remedy the constitutional violations that he *admitted* occurred at the time of Mr. Simmons' trial. As the Court acknowledged, the remedy that the Avoyelles' Parish District Attorney's Office should have conceded to was a new trial.

Therefore, this Court should grant summary judgment and the writ of mandamus because there is no material issue of fact that needs to be resolved here. Justice compels this Court to do so.

All parties agree that Vincent Simmons was subjected to a Brady and Jencks Act violation. The only remedy here is to order a new trial. To delay that would be to allow a sentenced prisoner to sit in prison based upon a conviction that resulted from an absolutely unfair trial. This is a violation of Mr. Simmons 5th, 8th and 14th Amendment rights.

La. CCRP §§ 930.3(1), La. CCP § 966 and La. CCP § 3862 mandates this Court act immediately and vacate Mr. Simmons' conviction.

ALTERNATIVELY, THE LETTER OF HAROLD BROUILLETTE, TESTIMONY OF MICHAEL KELLY AND CHARLES RIDDLE AND THE EVIDENCE SUBMITTED AS EXHIBITS DURING THE MAY 21, 2021 HEARING CONSTITUTE NEWLY DISCOVERED EVIDENCE AND BRADY AND JENCKS VIOLATIONS BY THE AVOYELLES' PARISH DISTRICT ATTORNEY'S OFFICE THAT CAN ONLY BE REMEDIED BY A NEW TRIAL. THERE IS NO MATERIAL ISSUE OF FACT WITH REGARD TO THIS CONSTITUTIONAL VIOLATION.

While Harold Brouillette did not testify at the hearing on May 21, 2021, he provided a letter to Mr. Simmons stating that he did not receive certain items of discovery that he became aware of. See Exhibit D – November 13, 1998 letter by Harold Brouillette. And the discovery disclosed by the State in 1993 as a part of a response to Mr. Simmons writ of mandamus provided conclusive proof of Brouillette's claims. See Exhibit E – Mandamus Response by the State. Mr. Simmons was deprived of a fair trial because his attorneys did not receive any discovery.[4]

The Avoyelles Parish District Attorney's Office, by Way of Charles Riddle's Hearing Testimony, Conceded that the First Time Vincent Simmons Received his Discovery File was in December of 1993. As Such, There is No Material Issue of Fact that the Avoyelles Parish District Attorney's Office Committed a Brady Violation Requiring a New Trial.

On May 21, 2021, Charles Riddles' testimony produced the following newly discovered evidence for the record: (See Exhibit B) [5]

Q. And in 2004 at the very least you knew that Harold Brouillette had written a letter in 1998 saying that at the very least that they didn't get medical records, right?
A. I think that that is when I first became aware of it and …
Q. So in 2004 you became aware of this?
A. Yeah, I was in office for about a year.
Q. And you didn't speak to Michael Kelly about the fact that Harold Brouillette made this allegation?
A. Again, during that time period while Mike was first assistant we avoided other than who did he think or who did I think should be the person handling it instead of him. Because normally he would have handled those cases.
Q. Would you have … you didn't tell Laurie White hey you should talk to Mike Kelly in my office, he might know something, did you?
A. No, because Mike and I didn't talk about what he knew or didn't know.
Q. But you knew that Harold Brouillette had written a letter in 1998 that he didn't get discovery, so you thought that that …
A. But he didn't … I think if I'm not mistaken that letter was referring to a specific item of discovery, the doctor's report. And at the end he talked about how his report was a little bit

[4] Notably, when Mr. Simmons filed a motion to vacate in 1994 based upon newly discovered evidence and Brady that was turned over for the first time on December 7, 1993, he was procedurally barred under La. CCRP 930.8. State ex rel. Simmons v. Whitley, 1996 La. LEXIS 2036, 677 So. 2d 445, 94-1140 (La. 08/01/96).

[5] Pages of the hearing testimony will be delineated by "HT".

different and maybe it wouldn't have been as good as he had thought, because slightest penetration and it was attempted rape, not aggravated rape.
Q. But you already knew he had said that Harold …
A. That he didn't have it, yes. I knew that.
Q. All right.
A. I knew that Harold had said he didn't have it, yes.
…
Q. And so you knew that he was … obviously Mike Kelly is utmost integrity and honest, right?
A. Yeah.
Q. And you knew that he would have told you the truth about the discovery file, right?
A. I knew that he would have told me the truth as much as he would have known.
Q. O.K. And don't you think it would have done some justice for Vincent Simmons to get to the bottom of whether Mike Kelly had any discovery in this case?
A. Again, I have to make decisions based upon what I am faced with. I was aware of other crimes that he had committed and I made the decision that we would continue to proceed procedurally if we could deny it that we would deny it or that the courts would ultimately deny it.
Q. It didn't matter that the attorneys at trial didn't get to the statements of the witnesses, right, it didn't matter about that right?
A. I didn't know that, okay. And when it was brought up then the courts felt like that wasn't important enough for whatever reason.
…
Q. And you're aware with regards to Ms. White's motion and in my motion we're alleging constitutional violations with discovery issues, right?
A. I think that you are alleging that, yes.
Q. And then it's true isn't it that Mike Kelly in the past at least six – seven months has told you that he didn't receive discovery, right?
A. He … I'll tell you what I can remember him telling me. He knows he didn't receive all discovery, and he knows that if one thing he mentioned was that if Harold Brouillette would have received some of the discovery would have been able to ask more questions.
Q. So once you heard that, why oppose? Isn't it your duty to seek justice at this point?
A. Yes.
Q. Isn't it your duty to let the man have his right to due process and present this evidence that was never presented?
A. If he's legally able to do so then yes.
Q. You're interested in the truth, right?
A. Absolutely. You know that's one reason why we made that offer.
…
Q. But you don't believe he should have received discovery?
A. Yes I believe he should have received discovery.
Q. You were a defense attorney, right?
A. Yes.
Q. You were a defense attorney during Mr. Knoll's time?
A. Yes.
Q. Isn't it true that Mr. Knoll was known not to turn over discovery all the time, or all of discovery?
A. This is my memory of how discovery worked with Mr. Knoll, I had to go to his office and look at the file.
Q. But you don't know whether that file's complete at the time that you look at it, right?
A. Well I can only trust that it is. I would hope that he wouldn't have held back stuff.
Q. We all hope as defense attorneys for that. Well you're not a defense attorney anymore but when you were, you hoped that they would be honest with you, right?
A. Yes.
…
Q. Isn't it true that if Vincent Simmons didn't receive discovery in this case, that he's entitled to a new trial? Isn't that true?
A. Not necessarily.
Q. Are you familiar with Weary V. Caine?
A. I'm familiar with the fact that that has been brought up before and has been denied.
Q. No, no. I asked you are you familiar with Weary V. Caine?
A. Not specifically. But I'm familiar with the principles you're talking about.
Q. Are you aware that the supreme court changed the standard by which this State uses newly discovered evidence and Brady material that it's not all that the defendant has to show is that the evidence that they didn't get at trial undermines the conviction?

A. Mr. Bonus, let me make it clear.
Q. I'm just asking if you're aware…
A. If Judge Bennett, no not new interpretation. If Judge Bennett or another judge agrees with your interpretation of his right to a new trial, he will get a new trial. You're asking me if I'm going to grant it, no. And if I'm going to consent, the answer is no.
…
Q. So based upon … you'd believe Mike Kelly if he said that he'd never seen those documents right?
A. Yes.
Q. So that would mean that Mike Kelly is saying that Vincent didn't receive a fair trial, right?
A. Ask Mike Kelly.
Q. So you're saying that if the defense attorney says that he didn't receive documents that were exculpatory then your position is it doesn't matter, I'm not going to give … I'm not going to concede to anything?
A. You're asking me if I am going to consent to a new trial the answer is no.
Q. Even if Vincent didn't receive a fair trial?
A. That's your interpretation.
Q. So your position is after being a defense attorney that if the defendant doesn't receive all the discovery that it doesn't matter that he … what is our position, I mean if a defendant doesn't receive discovery and he didn't receive a fair trial right?
A. My position is that after looking at all the factors involved in this case I am not going to consent to a new trial. If a court orders it…
Q. That's not my question. My question is if the defendant…
BY THE COURT:
Do you believe Vincent Simmons had a fair trial, that's the question.
BY MR. BONUS:
Yes,
A. I have no idea.
BY MR. BONUS
Q. And it doesn't matter that he didn't receive discovery?
A. I think if a court says it matters, then it matters. If a court rules that he didn't receive fair trial, then he's going to get a fair trial.
Q. You're aware that … maybe you're not. But neither twin Sharon or Karen or Keith said that they knew his name when they first went to the police, you're aware of that, right?
A. I believe that is correct.
Q. So their testimony at trial t hat they knew his name was a lie, right?
A. I'm not going to say that it was a lie.
Q. Are you aware on page 57 of the preliminary hearing that Karen Sanders actually said the reason why we didn't go to the police was because we didn't know the man's name? Are you aware of that?
A. No I'm not.
…
Q. So you're aware though that any time that there's a lineup or an identification procedure, since 1967 it's appropriate to have an identification hearing, right?
A. Yes.
Q. One wasn't had in this case, right?
A. I don't know.
Q. And there's no evidence in this case that Kelly or Brouillette used the photographical lineup?
A. Not that one for sure.
Q. Or not the original statements right?
A. That based on what Mike Kelly testified to yes.
Q. All right. It's pretty shocking that Mike Kelly didn't even know there was a lineup in this case, isn't it?
A. I was surprised, yes.
Q. Are you concerned about that with regard to my client's rights?
A. Yeah I'm concerned.
Q. That still doesn't change your position…
A. I'm not going to change my position as to whether I'm going to consent to a new trial.
Q. It's pretty shocking that neither defense attorney used the exculpatory material in this case, isn't it?

A. You're talking about the doctor's reports?
Q. No, everything, I'm talking about all of this stuff? It's pretty shocking that their questions, they were not able to use any of the discovery, isn't that … for you as a former defense attorney, would you not be upset about that?
A. Yeah I'd be … I'd definitely be upset, yeah.
Q. But your position now is changed because you're a prosecutor, isn't it?
A. No. I'm not changing it, I'm just telling you the circumstances of this case, I'm not going to consent to a new trial. A judge can order it.
…
Q. No? So do you believe Mike Kelly definitely didn't get those documents?
A. I believe that Mike Kelly did not receive those documents.

HT: 80-82, 87, 88, 91-93, 94-96.

Additionally, Michael Kelly's Testimony Establishes that the State Failed to Turn Over Exculpatory Evidence (Basically the Entire File) that Was Material with Regard to Proving Vincent Simmons's Innocence.

On May 21, 2021, an evidentiary hearing was held before this Court wherein Michael Kelly, Vincent Simmons's trial attorney and member of the APDAO for approximately 25 years, testified to the following: (See Exhibit B)

Q. And with respect to that letter did [Harold Brouillette] speak to you about the fact that medical reports weren't turned over?
A. Yes, sir.
Q. And how did he feel about that?
A. He was upset.
…
Q. Well do you recall, besides what's covered in the letter, do you recall receiving any witness statements prior to trial?
A. I recall that we did not receive witness statements.
Q. O.K. And you recall conducting a preliminary hearing in this case?
A. Yeah, actually Harold Brouillette conducted it but yes I was there throughout.
Q. And …
A. We did not have witness statements, that you've told me in the last three or four months existed. Apparently the file had … the witnesses had been interviewed on tape and those tape recordings were transcribed. And we didn't have of that. There were issues about identification, which we were unaware of when we walked into the preliminary exam the three main witnesses, the two victims actually there were three victims I guess there was a kidnapping involved. All pointed at Mr. Simmons without any hesitation. We didn't know, based on what you're telling me because I had never seen the State's file, I want you to understand that. That there were some differing descriptions that did not fit Mr. Simmons. That one of the girls had made the statement, this is what you told me, that one racial epithet looks like another racial epithet and I can't tell the difference. And had we known those things I guarantee you Harold Brouillette and myself would have told the jury that.
Because it indicated not only bias but the fact that the identification was at issue. We didn't … identification was at issue at all. And the lineup picture, I think it was put in the paper, I kind of remember that.
…
A. Exhibit 3 that this is what appeared in the paper. We weren't even aware there was a lineup.
…
Q. So I mean and this goes to some of the things you were talking about during trial, so you recall that at least one of the girls and in this instance it would be Karen that she had been raped orally, anally, and vaginally, do you recall that one of the girls said that at trial?
A. What I recall is Mr. Knoll's closing statements to the jury. In which he urged the jury that both victims had been raped orally, anally and vaginally. It was very, very powerful and I remember it. Now that I remember. Can I tell you what each of the victims said, no. I can't tell you that, you'll have to look at the record, whatever it says it says.
Q. Yeah. So you wouldn't recall then that Sharon Sanders had stated that at trial she said that Mr. Simmons had not been able to insert his penis into her vagina, you wouldn't recall

that. But that would matter right if you had received the statement from Sharon Sanders where she talked a thirty minute vaginal rape where she bled, that would matter right?
A. Absolutely.
Q. Absolutely. Do you recall that both Karen and Sharon and Keith both said that they heard the name Simmons?
A. I can't recall it but I know there was a reason why we didn't think identification was an issue. But to sit her and tell you I remember that no, I don't. But …
Q. But it would matter to you if you saw the original statements?
A. That they didn't know who he was?
Q. Yes.
A. Absolutely.
Q. And they didn't know his name?
A. Absolutely.
Q. Including Keith?
A. Absolutely.
Q. O.K.
A. Those are things that any competent defense attorney would leap to. And if we knew and we didn't do it we'd be guilty of ineffective assistance of counsel.
…
A. Everybody in this room except for his family is proceeding on the theory that Mr. Simmons is guilty. None of us are God, and none of us know, we'll never know the real truth, in my opinion. We rely on the jury to come up with a verdict, it's not the judge, it's not the prosecutor, it's not the defense attorneys. And what we have here is evidence which we as defense attorneys as part of his right to counsel were not given, for whatever reason. And there might be other explanations I don't understand. But that verdict, the reliability of that verdict that said Mr. Simmons was guilty of these crimes is undermined by the total lack of transparency as far as the discovery in this case. And that's not … I'm not attacking Mr. Knoll or Ms. Knoll I'm not. And I don't know exactly … we didn't have a formal discovery procedure, I wasn't aware of any office procedure. But I can tell you this Judge, Harold Brouillette and Mike Kelly would have used those things that are in the State's file in Mr. Simmons' defense. We were not conspirators trying to deny a man his right to a fair trial.
…
Q. Were you aware that Mr. Papale testified in front of Judge Johnson I think it was Michael Johnson in 1994?
A. No.
Q. O.K. So…
A. I know that it was supposedly Tommy that had copied the file.
Q. O.K. And you had never seen this file before?
A. No. To this day I haven't seen the file.
Q. So you weren't aware that each girl gave an audio taped statement?
A. No. No that was something actually I learned from you.
Q. O.K. You weren't aware that there was a photo lineup?
A. No.
Q. Were you aware that Keith gave a statement to police?
A. No.
Q. Were you aware that there … the medical reports from Dr. Bordelon?
A. No.
Q. Were you aware that there were multiple supplemental reports from the officers in this case detailing the witness statements, Mr. Simmons arrest and lineup?
A. No.
…
Q…Were you aware that Sharon Sanders told police that she gave her bloody underwear to her grandmother to wash?
A. I can't remember. I don't really …
Q. So if it was a part of the statement so you haven't …
A. No, no if it's not in the record of the testimony at the preliminary hearing or the trial no. Then the answer is no if it's not in there.
Q. So you weren't aware of the fact obviously you weren't aware of the fact that Sharon Sanders referred to Mr. Simmons as the 'N' word?
A. No.
Q. You weren't aware of the fact that Sharon Sanders said during … to the police that all blacks look alike?
A. No.

Q. Were you aware that Karen Sanders … that the girls didn't know the actual date of the rape, alleged rape?
A. If … all I know is what was in …
Q. In the trial…
A. Would have been in the trial transcripts. If there was something different reflected from those pre-trial statements no.
Q. But that would have made a difference right, because you …
A. There's no question about it.
Q. O.K.
A. We tried to establish an alibi and it's very difficult to do, we tried. But we were not successful.
Q. That was one of your defenses right, that he an alibi.
A. Yeah and that kind of went by the way side, it just … it didn't … I don't know if we actually called any of the witnesses or not but you now, then it just became a question of trying to attack the girls story, anything that we had and the only thing we really had was whether it was internal to the story as well as any prior statements, that being the preliminary hearing, if the story changed.
Q. From the preliminary hearing?
A. Correct.
Q. So the only thing you had at trial was the preliminary hearing?
A. Yes.
Q. And with regard to if basically at least the girls statements to police that they didn't know Vincent's name, they didn't know the perpetrator's name, that would have been a big deal to you to have a trial when they said they knew his name, isn't that correct?
A. Yes.
Q. And called the …
A. Yes.
Q. So you weren't aware that Mr. Simmons was subjected to a lineup with three witnesses that viewed the lineup at the same time?
A. No. Wasn't really the lineup.
Q. So did you ever look at the lineup with him in the handcuffs?
A. Just in that photo.
Q. Just from what you saw?
A. Right.
Q. And if you'd seen that …
A. Without doubt, if we had known there had been a lineup, it would have sparked a hundred questions.
Q. Yeah. How about an evidentiary hearing?
A. Oh absolutely.
Q. Because what Wade was in 67, correct?
A. We knew what the law was then and it would have sparked an entire line of inquiry as to how it was that they were now identifying him if they couldn't have identified him initially.
…
Q…And would it have mattered to you if you'd read those medical reports and you saw that neither Sharon nor Karen suffered any physical injuries?
A. Tremendously.
Q. Would you have called the doctor …
A. We were … yes. We weren't aware there had been an examination.
Q. O.K. And obviously with Sharon her hymen being intact that's … that would highly discredit Sharon's testimony, correct?
A. It would go some distance, not completely. But it's anything … any port in the storm when you have as little as we had to work with.
Q. So you know but it would cause you to call a doctor basically?
A. Yes.
Q. All right. So the impeachment material that we've spoken about though these are obviously you need those to defend your client, right?
A. Absolutely.
Q. Cross examination you need those?
A. Effective cross examination as a defense attorney requires you to have those prior statements on hand when you making the examination.
Q. And even in 77 you were entitled to that material, right?
A. Yes.
Q. And Brady requires the district attorney to turn over those specific items, right?
A. Yes.

…
Q. Did you ever tell Charles Riddle or Tony Salario that you didn't receive discovery?
A. I didn't tell Tony that but I've told Charles that, especially recently.
Q. O.K. So you told Charles Riddle that you and Harold Brouillette didn't receive discovery in this case?
A. Right. The things that you've told me, the witness statements, the recorded statements, the use of the 'N' word, the lineup I said you know we didn't get that. He didn't argue with me. But I don't know what that means.
Q. O.K. So there was no response basically from Mr. Riddle?
A. No.
Q. How far back do you think you told Mr. Riddle about this? In passing or whatever.
A. Really I would say it's probably all within the past six months.
Q. Six months?
A. Whenever it was that you started whatever you filed and when you came to see me…

HT: 27-31, 33, 34-39.

The Court offered a few questions as well to close out the blockbuster testimony of Michael Kelly:

Q. I was under the impression coming in here today that the complaint of lack of exculpatory evidence being provided to the defense as required by law only consisted of that medical report, you're telling me today and from Mr. Bonus' questions there was a great deal of potential exculpatory evidence that was not delivered in addition to that. Is that correct?
A. Based on what Mr. Bonus has told me, exists in the file.
Q. So subject to prove that those statements were taken prior to trial…
A. Yes.
Q. In the passion of the district attorney, subject to what Mr. Bonus has questioned you about …
A. Correct.
Q. These are all items that as an attorney you believe consist of exculpatory evidence that should have been provided to the defense?
A. One hundred per cent.
Q. And was not?
A. Correct.

HT: 39-40.

As such, Michael Kelly's testimony itself is newly discovered – it was shocking and heard for the first time ever. Not only did Mr. Kelly testify about what was not turned over, he also testified to the materiality of the evidence that the defense did not receive. See Weary v. Cain, 136 S.Ct. 1002, 1006-1008 (2016); State v. Kang, ___ So. 3d ___, 2019 WL 150635, *4-5 (La. App. 2019); Alvarez v. State, ___ So. 3d ___, 2018 WL 4354727, *3 (La. App. 2018); State v. Crawford, 2017 La. App. LEXIS 1676, * 6-7. On Kelly's testimony alone this Court is mandated to grant Mr. Simmons' motion for a new trial as there is no material issue of fact with regard to the Brady and Jencks claim in the case at bar.

The Court has now heard from Vincent Simmons' trial attorney Michael Kelly. And here, the APDAO has, for the first time ever, conceded that the evidence turned over to Vincent Simmons and the Court on December 7, 1993 by the APDAO is newly discovered evidence that constitutes a severe Brady violation. The evidence submitted as exhibits 2 & 3 of the May 21, 2021

hearing record constituted *the entire discovery file.* As Michael Kelly testified under oath at the May 21, 2021 hearing, Simmons did not receive *any discovery* prior to trial.[6]

The Evidence Entered into the Records As Exhibits 1, 2 and 3 of the May 21, 2021 Hearing Constitute Newly Discovered Evidence and Brady Material that Support Mr. Simmons's Innocence.

Attached hereto as Exhibit F is transcript of a contradictory hearing that took place on December 6, 1994.[7] During that hearing, the APDAO entered into the court record *all* of the evidence that it turned over on December 7, 1993 in an answer to Vincent Simmons's mandamus that was filed in 1993. See Exhibit E – the State's answer to Vincent Simmons's mandamus, dated December 7, 1993. As is evidence in the APDAO's file, the Court file, testified to by Michael Kelly and conceded to by Charles Riddle, all of the evidence that was turned over by the State on December 7, 1993 was not provided to Mr. Simmons's defense team in 1977. In other words, the first time anyone laid eyes on these documents other than the police and, presumably, Eddie and Jeanette Knoll were on December 7, 1993 when the State answered Mr. Simmons's mandamus. Former First Assistant Thomas Papale testified during the contradictory hearing that the only documents that the State provided to Vincent after his trial was the trial transcript. See Exhibit F, page 8.

The following evidence was disclosed for the first time in 1993 and entered into the Court's record in 1994: (See Exhibits F, pages 10-13 & E)[8] [9]

1. F.P. Bordelon's June 10, 1977 report on KAREN and SHARON. See Exhibit E, B-082-083.
2. KAREN's May 22, 1977 audio taped transcript with the Sheriff's Department. See Exhibit E, B-012-028.
3. SHARON's May 22, 1977 audio taped transcript with the Sheriff's Department. See Exhibit E, B-029-038.
4. Keith Laborde's May 23, 1977 statements (including in reference to lineup), handwritten and typed. See Exhibit E, B-047, 058-062.
5. The May 23, 1977 typed and handwritten reports of SHARON's statements regarding the alleged incident and the lineup. See Exhibit E, B-042-046, 048-050.
6. The May 23, 1977 typed and handwritten reports of KAREN's statements regarding the alleged incident and the lineup. See Exhibit E, B-051-057.
7. Barbara DeCuir reports (handwritten and typed) dated May 25, 1977 – documented the lineup as seen by witnesses. See Exhibit E, B-068-073.
8. May 25, 1977 reports (handwritten and typed) of Robert Laborde – documented the unlawful arrest of Vincent Simmons and the lineup as seen by the witnesses. See Exhibit E, B-074-79.
9. Photograph of the lineup. See Exhibit E, B-084-093; see also Exhibit G – Blown up copy of the lineup that was conducted on May 23, 1977.
10. May 23, 1977 arrest report by Robert Laborde which proves that Laborde and Det. Juneau

[6] Specifically, Kelly testified that the only statements that the defense team had were the preliminary testimony of Karen and Sharon Sanders. Nothing else was provided to the defense.

[7] This was Exhibit 1 of the May 21, 2021 recusal hearing.

[8] Much of the State's December 7, 1993 response to Simmons's mandamus is embodied in exhibits B, E, C, I, CC, BB, G, H, U, DD, V, AA of Simmons's October 20, 2020 Post-Conviction Petition.

[9] The following documents mentioned are marked by Bate Stamped Numbers B-001-B-123.

arrested Vincent Simmons "on site", See Exhibit E, B-111.

Without belaboring the Court with repetition,[10] the above material proves that (1) Vincent Simmons was arrested without probable cause, (2) the "victims" in this case could not even describe the "black man" that raped and kidnapped them, (3) Karen's and Sharon's description of this "perpetrator" differed from one another, (4) Sharon, Karen and Keith were only able to identify Vincent Simmons after he was placed in a ridiculously suggestive lineup with handcuffs on, (5) neither girl had any physical injury, including Sharon's hymen was intact, even though both girls described a brutal rape with penetration in their statements to police, (6) none of the physical evidence was even slightly considered or gathered to corroborate the girls, (7) Sharon actually admitted that she could not identify the "perpetrator" by stating that "all blacks look alike", (8) investigators actually provided the date that this "crime" allegedly happened on, and (9) the preliminary hearing and trial testimony that Karen, Sharon and Keith knew the "perpetrator's" name was a lie.

In anticipation of the State's response that Eddie Knoll can dispute the obvious, Mr. Knoll has already provided a statement that he had "open file discovery". See Exhibit C, 1:17-1:36, 10:45-10:57. As stated above, this does not remedy the discovery violation. See State v. Ballard, 2021 La. App. LEXIS 1136, *31 ("the district court characterizes the relator's Brady claim as an argument that the District Attorney's open file discovery policy was a newly discovered fact that would qualify as an exception to the time limitation. The district court misapprehends the relator's claim. **Rather, the relator argues quite correctly that open file discovery did not discharge the State's affirmative Brady obligation."** (Emphasis added)). And as Michael Kelly so aptly pointed out during his testimony, there is no guarantee that Mr. Knoll even had the files that are now before the Court as evidence. As such, there is no question of material fact as to whether there is a discovery violation.

CONCLUSION

PURSUANT TO La. CCRP §§ 930.3(1), RELIEF SHALL BE GRANTED IN THE CASE AT BAR BECAUSE VINCENT SIMMONS' "CONVICTION WAS OBTAINED IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES [AND] THE STATE OF LOUISIANA". MR. SIMMONS' CONTINUED INCARCERATION AS A CONVICTED INMATE IS A VIOLATION OF THE LOUISIANA AND UNITED STATES CONSTITUTION AND REQUIRES THE IMMEDIATE VACATUR OF HIS CONVICTION. La. CCRP §§ 930.3(1); La. CCP § 966; La. CCP § 3862.

[10] For a full recitation of the facts *and all of the evidence* that supports this motion, this Court should refer to pages 5-29 of Mr. Simmons's initial memorandum of law in support of his post-conviction petition dated October 20, 2020.

The above facts firmly establish that there is clear and convincing newly discovered evidence that supports Vincent Simmons innocence, the State Committed a Brady violation and Vincent Simmons did not receive any semblance of a fair trial. In fact, nothing that occurred prior to or during trial could be considered fair. Mr. Simmons' defense team was "shotgunned" into trial in less than 60 days and forced to litigate completely in the dark with no discovery. This conviction is tailor made to be vacated immediately under La. CCRP §§ 930.3(1), La. CCP § 966 and La. CCP § 3862.

WHEREFORE, in light of the foregoing, this Court should issue an Order granting this petition, thereby vacating the conviction and ordering a new trial and for such other and further relief to petitioner as it may deem just and proper.

Dated: August 9, 2021
Alexandria, LA

Respectfully submitted,

LARVADAIN LAW

By: */s/ Malcolm*
Malcolm Larvadain
626 8th St
Alexandria, LA 71301

JUSTIN C. BONUS, ESQ.
118-35 Queens Blvd, Suite 400
Forest Hills, NY 11375

By: */s/Justin Bonus*
Justin C. Bonus, Esq.

Of Counsel: Jonathan I. Edelstein

Attorneys for Petitioner

Cc;
The Honorable William Bennett
Twelfth Judicial District Court – Division B
PO Box 84
312 North Main Street
Avoyelles Parish Courthouse
Marksville, LA 71351
EMAIL: (judgeb@12thjdc.org)

Grant Willis
Office of Attorney General Jeff Landry
Post Office Box 94005
Baton Rouge, LA 70804

CERTIFICATE OF SERVICE

I, Justin Bonus, do hereby certify that a copy of the foregoing has been delivered via hand to the Avoyelles Parish District Attorney's Office this _____ day of _____.

_____
Justin C. Bonus, Esq.