IN THE COURT OF APPEALS OF IOWA

No. 3-885 / 12-0399
Filed November 6, 2013

STANLEY CARTER LIGGINS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Bobbi M. Alpers, Judge.

A postconviction relief applicant contends (1) the State suppressed exculpatory evidence and (2) newly-discovered evidence warrants a new trial. **REVERSED AND REMANDED.**

Kent A. Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Michael J. Walton, County Attorney, and Julie A. Walton and William R. Ripley, Assistant County Attorneys, for appellee State.

Heard by Vaitheswaran, P.J., and Potterfield and Danilson, JJ. Tabor, J., takes no part.

VAITHESWARAN, P.J.

In this appeal from the denial of a postconviction relief application, we must decide whether the State suppressed exculpatory evidence.

I. Background Facts and Proceedings

This case has a long history that began with the discovery of the charred body of a child in Davenport, Iowa. The State twice prosecuted Stanley Liggins for first-degree murder. The first trial culminated in a finding of guilt that was reversed on appeal. *State v. Liggins*, 524 N.W.2d 181, 189 (Iowa 1994). The second trial also resulted in a finding of guilt, but this time, the finding was affirmed on appeal. *State v. Liggins*, 557 N.W.2d 263, 270 (Iowa 1996).

Liggins filed two applications for postconviction relief. Both times, he alleged the State suppressed exculpatory evidence and newly-discovered evidence required a new trial.

During the first proceeding, the district court appointed a special master to cull through the prosecution and defense files and identify evidence that might have been suppressed. The special master found seventy-seven police reports that were in the State's possession but not in the possession of the defense. The defense flagged several of these reports as potentially exculpatory. Following a hearing, the district court determined that the flagged evidence was suppressed but was not material to the outcome. The court denied the first application and this court affirmed. *Liggins v. State*, No. 99-1188, 2000 WL 1827164, at *10 (Iowa Ct. App. Dec. 13, 2000).[1]

[1] Liggins also petitioned for habeas corpus relief. The Eighth Circuit Court of Appeals affirmed the denial of the petition. *Liggins v. Burger*, 422 F.3d 642, 655 (8th Cir. 2005).

Liggins's second postconviction relief application alleged in part that "a key State's witness was a paid police informant" and the State failed to disclose this fact to the defense prior to 2002. At a hearing on the application, Liggins's attorney established that a State witness at both of Liggins's trials was indeed a paid informant who may have participated in as many as eighty drug buys for law enforcement groups or officers affiliated with the Davenport Police Department. Payments to the witness spanned a two-year period between Liggins's first and second trials. Liggins's attorney attempted to establish that some of the payments were made by the supervising detective in the Liggins's investigation. While he pointed to certain undocumented disbursements from a police fund, he was unable to confirm they went to the witness.

After considering this evidence, the second postconviction court initially concluded the evidence was not suppressed. The court later amended its ruling to conclude the evidence was suppressed but was not material to the outcome. The amended ruling stated in pertinent part:

> [E]ven though the Davenport Police Department failed to provide the information to the applicant that a witness against the applicant was also a police informant at the time, there is no credible evidence that this individual provided false testimony for pay or other benefit in the murder case. If this information concerning the status of the witness had been made known to the jury, the jury would have considered this in addition to all other evidence presented at trial. If the jury threw out any testimony provided by the informant witness, there still was sufficient evidence to convince the jury of the applicant's guilt in this child's death and to convict him thereon.

The court denied Liggins's second application for postconviction relief.

On appeal of this denial, Liggins argues that (1) "the State suppressed exculpatory evidence and knowingly gave false testimony in violation of [his]

state and federal constitutional rights to due process" and (2) newly-discovered evidence warrants a new trial. We find the first issue dispositive.

II. Suppression of Evidence

"[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 prosecution." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). To establish a suppression claim, the defendant must prove by a preponderance of the evidence that: "(1) the prosecution suppressed evidence; (2) the evidence was favorable to the defendant; and (3) the evidence was material to the issue of guilt." *Harrington v. State*, 659 N.W.2d 509, 516 (Iowa 2003) (citation and quotation marks omitted). Our review of the record relating to this constitutional issue is de novo. *Aguilera v. State*, 807 N.W.2d 249, 252 (Iowa 2011).

The State does not dispute the second element—that the status of the witness as a paid informant was favorable to the defense. *See Banks v. Dretke*, 540 U.S. 668, 691 (2004) (stating a witness's "paid informant status" qualified "as evidence advantageous to" the defendant); *DeSimone, v. State*, 803 N.W.2d 97, 105 (Iowa 2011) ("In a case that hinges on a victim's credibility, evidence that impeaches one of the victim's few corroborating witnesses is, without question, favorable to the accused."). The appeal turns on the first and third elements. Liggins asserts that the second postconviction court was correct in concluding the witness's status as a paid informant was suppressed but incorrect in its determination that the evidence was immaterial. The State counters that "the prosecution here did not suppress evidence regarding the witness-informant," but

in any event, "[e]vidence that the witness-informant had been an informant in unrelated drug cases . . . constitutes impeachment evidence which falls short of materiality."

We begin with the first element—whether the evidence was suppressed. On this score, the Iowa Supreme Court has emphasized "[t]he test for suppression does not require that an individual prosecutor knows of the information; rather, a prosecutor has a responsibility 'to learn of any favorable evidence known to . . . others acting on the government's behalf in the case, including the police.'" *Aguilera*, 807 N.W.2d at 252 (quoting *Harrington*, 659 N.W.2d at 522); *accord Kyles v. Whitley*, 514 U.S. 419, 437–38 (1995) (rejecting the State's assertion that a prosecutor should not be held accountable for evidence known only to police investigators and not to the prosecutor and stating "the 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"). Impeachment evidence as well as exculpatory evidence is subject to disclosure. *United States v. Bagley*, 473 U.S. 667, 676–77 (1985); *DeSimone,* 803 N.W.2d at 105. "Such evidence is 'evidence favorable to an accused,' so that, if disclosed and used effectively, it may make the difference between conviction and acquittal." *DeSimone*, 803 N.W.2d at 105 (quoting *Bagley*, 473 U.S. at 676)); *cf. Napue v. Illinois*, 360 U.S. 264, 269 (1959) ("The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend.").

We turn to the record. Prior to the first trial, Liggins's attorney filed a discovery motion seeking, in part,

> [a]ny and all additional information or materials within the knowledge, possession, custody or control of the State or its agents which may tend or could be interpreted to be exculpatory to the Defendant as required pursuant to *Brady v. Maryland*, 373 U.S. 83, 835 S. Ct. 194, 10 L. Ed. 2d 215 (1963).

In ruling on the motion, the district court cited the State's acknowledgment of "its obligation to provide all exculpatory evidence to the Defendant." The court granted all aspects of the motion except a "dragnet" request for "[a]ny and all reports prepared by members of the aforementioned agencies in connection with the investigation of the disappearance or death of [the child] on or about September 17, 1998."

The State did not fulfill its acknowledged obligation to disclose all exculpatory information. Setting aside for the moment the seventy-seven undisclosed reports, the State undisputedly did not notify the defense that the witness in question was a paid informant. *See Banks*, 540 U.S. at 698 (noting the status of a State witness as a paid informant was "unquestionably 'relevant'"). We conclude the State suppressed this evidence. *See Bagley*, 473 U.S. at 683 (discussing evidence of possible incentives which gave affiants "a direct, personal stake in respondent's conviction"); *Eulloqui v. Superior Ct.*, 105 Cal. Rptr. 3d 248, 258 (Cal. Ct. App. 2010) ("Prior complaints that Eagleson had concealed payments or incentives to an informant would be relevant to impeach Eagleson's declaration and probable testimony at the habeas corpus hearing that Aflague was not a paid informant at the time of petitioner's trial. Although the information would be used in the course of the habeas proceeding, it would, in

theory, be used to prove petitioner's *Brady* claim, which would undermine confidence in the outcome of the trial."); *Schofield v. Palmer*, 621 S.E.2d 726, 730–31 (Ga. 2005) ("Because the reliability of a particular witness may be determinative of guilt or innocence, impeachment evidence, including evidence about any deals or agreements between the State and the witness, falls within the *Brady* rule. . . . We cannot countenance the deliberate suppression by the State of a payment to a key witness, and its attendant corruption of the truth-seeking process, in any case . . . ."); *Lott v. State*, 690 N.E.2d 204, 211 (Ind. 1997) ("A prosecutor must disclose to the jury any agreement made with the State's witness, such as promises, grants of immunity, or rewards offered in return for testimony.").

We recognize that everyone with knowledge of the payments denied that they were made as a quid pro quo for the witness's testimony in the Liggins trials. In our view, the absence of a direct connection between the payments and the witness's testimony is immaterial. What matters is the fact that payments were made. Whether in this case or another, they provided a powerful incentive for the witness to cooperate with the State. The witness stated as much, essentially telling officers that police protection was expected as a result of the work performed. The defense was entitled to impugn the witness's credibility by apprising the jury of this incentive. *See Banks*, 540 U.S. at 701–02 ("The jury, moreover, did not benefit from customary, truth-promoting precautions that generally accompany the testimony of informants. This Court has long recognized the 'serious questions of credibility' informers pose." (citation omitted)); *see also In re Sealed Case No. 99-3096*, 185 F.3d 887, 896 (D.C. Cir.

1999) (stating "agreements in the other cases have everything to do with this case" because they may reflect that the testimony in this case was given to "work off" obligations in other cases).

In concluding that the payment evidence was suppressed, we have also considered the supervising detective's denial of any knowledge of the payments, whether as a quid pro quo for testimony in the Liggins trial, or otherwise. His denial holds little sway, given the detective's admission that all information relating to the investigation was funneled to him. That information included a statement taken from the witness shortly after the death of the child in 1990. The detective had ample opportunity to verify the status of the witness as a paid informant prior to the witness's testimony at the first trial in 1993. He had an obligation to do so, an obligation that was confirmed by the district court.

Significantly, this was not a minor witness but, by the prosecutor's own admission, someone who was crucial to the State's case. That fact alone demanded further investigation of exculpatory evidence associated with the witness. As one court stated, "When the core of the State's argument relies on the testimony of an essential witness, the State has a duty to discover anything, and everything that concerns that witness's credibility and, thus, potential for impeachment." *State v. Williams*, 896 A.2d 973, 982 (Md. 2006); *see also People v. Gennardo*, 539 N.E.2d 400, 409 (Ill. Ct. App. 1989) ("*Brady* imposes a continuing duty on the prosecutor to furnish defense counsel with information favorable to the defendant and that duty is in no way altered by the prosecutor's ignorance of such information in the possession of officers involved in the investigation and prosecution of the case against the defendant.").

The detective would not have had to reach beyond the department he supervised to discover the payments. He testified that he was in charge of the vice-narcotics unit of the Davenport Police Department, the same unit housing the officer who paid the informant for the drug buys. The detective had enough influence over that unit that he was able to pull in undercover street-crime officers to assist during the early stages of the Liggins investigation. Significantly, the last name of an officer involved in the drug buys appears on reports generated in the Liggins investigation. While we have no way of knowing whether the department employed more than one officer with this last name, we are convinced that the supervising detective was in a position to expeditiously track down the payments. *See Williams*, 896 A.2d at 991 ("The State acts as one unit, and as such, declining to make a reasonable inquiry of those in a position to have relevant knowledge is appealable error.").

In sum, the State could not shirk its duty to obtain the exculpatory evidence of the witness's status as a paid informant by pointing to the fact that the payments were made in other cases or by denying knowledge of the payments. The State was obligated to unearth and disclose this critical information.

We turn to the third element—the question of materiality. "Evidence is material when 'there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.'" *Harrington*, 659 N.W.2d at 523 (citation omitted). This does not mean that a defendant must prove that disclosure of the evidence would have resulted in an acquittal. *Id.* "'Rather, the question is 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.'" *Id.* (quoting *Strickler v. Greene*, 527 U.S. 263, 290 (1999) (internal quotation marks and citation omitted)); *accord Kyles*, 514 U.S. at 434 ("The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.").

As discussed, seventy-seven police reports were discovered to have been suppressed before Liggins filed his second postconviction relief action. *Liggins*, 2000 WL 1827164, at *1. In the appeal of the first postconviction ruling, this court considered a few of these reports and found no reasonable probability the result of the trials would have been different had those reports been disclosed. *Id.* at *4–5. The State urges us to begin where that opinion left off and limit our materiality analysis to the evidence that was discovered to be suppressed after the opinion was filed. The State's position is inconsistent with *Kyles,* in which the Court stated that "[s]uppressed evidence [is] considered collectively, not item by item." 514 U.S. at 436; *see also Roberts v. State*, 840 So. 2d 962, 972 (Fla. 2002) ("[T]he *Brady* claims raised in Roberts' first postconviction motion must be considered in a cumulative analysis."); *Commonwealth v. Abdul-Salaam*, 42 A.3d 983, 985–86 (Pa. 2012) (analyzing the cumulative effect of new *Brady* evidence with evidence that had been the subject of another *Brady* claim in a prior postconviction relief act petition). A materiality analysis must consider all the suppressed evidence, including evidence that was addressed in a prior proceeding.

We return to the record. The State made a significant effort to connect Liggins to the crime with evidence that his car was in the vicinity of the child's body. During the investigation, the Davenport Police Department seized and impounded two vehicles of interest: (1) a Red Chevrolet Impala driven by one Eddie Zapien, who, along with Liggins, was at the home of the child on the day of the child's death, and (2) a maroon Peugeot owned by Liggins's girlfriend and known to have been driven by Liggins. At trial, the State focused on the Peugeot, despite testimony from a Department of Criminal Investigation employee that he "found nothing that . . . could associate [the child] to this vehicle."

The parade of witnesses called to tie the Peugeot to the crime scene included an elderly gentleman, Lloyd Eston, who was so confused before the first trial that he was deemed unavailable to testify. *Liggins*, 557 N.W.2d at 269. At the second trial, the State offered the transcript of his deposition, which was admitted. *Id.* Eston testified that he was driving home on the night of the child's death when he saw a car parked along the road, with the trunk open and a man behind it. According to Eston, the car was "[r]ed." When pressed as to whether it was a brighter or darker red, he responded, "medium reddish." He remembered nothing about the taillights of the car, a fact that another witness, Wanda Hughes, would testify to, and he could only say that the car was "similar" to a picture of a car shown to him by police. As for the man behind the car, he described him as "pretty close to six foot tall, but the race I couldn't tell you."

The State also called Donna Adkins, whose boyfriend lived in an apartment complex next to a motel at which Liggins stayed. In both trials, she

said that she noticed a plastic gas can in the backseat of a red car parked in front of her boyfriend's apartment and a bad smell of gas fumes coming from the car. Adkins knew this was the car of interest to the police because she saw it being impounded and was asked to identify the car in the impoundment garage after being questioned. Adkins testified she never saw who drove the car.

A third witness asked to tie the Peugeot to the crime scene was Wanda Hughes. At the first trial, she testified that she saw a fire on the night the child's charred body was discovered, as well as a car. When asked what kind of car she saw, she responded, "I don't know. I really don't know." She described it as "kind of small" and said "[y]ou could tell it was a foreign car because the [tail]lights stood out"; the lights on the right side were not as bright as the lights on the left side. At the second trial, she testified that she saw a car pulling away and "it was a foreign car because the [tail] lights were different than most American cars." She admitted "it was dark . . . very dark." None of these assertions were contained in a 1990 statement she gave to police.

At best, this circumstantial evidence establishes that a red car was seen parked along the road in the vicinity of the child's body, a red car containing a gas can was parked near where Liggins stayed, and a foreign car with odd taillights was seen from a distance on a dark night. We would be hard-pressed to characterize this attempted linkage of the Peugeot to the crime scene as strong. Nonetheless, many other witnesses testified concerning various aspects of the crime and crime scene, allowing a reasonable juror to find sufficient evidence of guilt. *See Liggins*, 557 N.W. 2d at 269–70.

But, as noted, sufficiency of the evidence is not the operative standard. *Kyles*, 514 U.S. at 434–35 (noting the materiality test is not a sufficiency-of-the-evidence test); *Harrington*, 659 N.W.2d at 523 (stating defendant was not required to establish disclosure would have resulted in an acquittal). We must simply determine whether the suppressed evidence undermines our confidence in the verdict. *Kyles*, 514 U.S. at 435. We now know that a witness characterized by the prosecutor as strong was a paid police informant. According to the prosecutor, the testimony was so strong that it would have been proffered even if the details of the informant's affiliation and work with law enforcement came to light. As it stood, the defense was not afforded the opportunity to shine a light on that affiliation.

The defense also was not afforded the opportunity to attack Adkins's testimony about the gas can with three suppressed reports. This court thoroughly addressed those reports in the prior appeal and concluded they were not material. *Liggins,* 2000 WL 1827164, at *4–5. We have no reason to quarrel with that conclusion, given the state of the record at the time. However, knowing now that impeachment evidence on a star witness was also not disclosed, we are convinced that access to the three reports became that much more important.

Our conclusion is bolstered by the suppression of an additional report of witness Sarah Bea. She stated that there may have been a red Camaro in the vicinity of the child's body. *Id.* at *3–4. While this court also found that suppressed report immaterial, the report takes on added significance in this proceeding.

Also pertinent are suppressed reports of Theresa Held, Jeff Sheldon, Holly Davis, and Michelle Renard. The reports detail alleged statements the child's stepfather made regarding his desire to videotape himself engaging in sexual conduct with the child. Liggins asserts he would have used this evidence to establish that the stepfather had a motive to kill the child, who was found to have been sexually abused prior to her death. While Liggins pursued this theory at trial, he did not have the benefit of this evidence which, again, became more important in light of the suppressed evidence that a key witness was a paid informant.

If the nondisclosure of the witness's status as a paid informant and the reports mentioned above were not enough to undermine our confidence in the verdict, a report that only came to light in the second postconviction relief hearing settles the matter. At that late date, the defense discovered that the State did not turn over an FBI report pertaining to witness Eddie Zapien, who, as noted, was in the home of the child along with Liggins on the day of the child's death. The report discloses that Zapien drove a "1979 red Chevrolet, with a white top and white interior." The report also discloses that Zapien recalled seeing two men near the residence "and a small car that Zapien felt possibly was a two-door brown Escort, however, was not sure." Zapien stated he arrived at the home at approximately 5:30 p.m. The child left the home five or ten minutes later, Liggins left fifteen to twenty minutes later, and Zapien left twenty-five minutes later. Zapien stated he visited friends until 11:00 p.m. He did not identify the last names of the friends, and there is no indication that the FBI followed up to confirm this alibi.

There is much that Liggins could have exploited in this report had he known about it, including the fact that Zapien left just after Liggins did. In combination with the suppressed evidence cited above, the failure to disclose this report undermines our confidence that Liggins received a fair trial. *See Banks*, 540 U.S. at 703 ("[O]ne can hardly be confident that Banks received a fair trial, given the jury's ignorance of Farr's true role in the investigation and trial of the case"); *Kyles*, 514 U.S. at 441 (stating the disclosure of witness statements "would have resulted in a markedly weaker case for the prosecution and a markedly stronger one for the defense"); *accord Barbee v. Warden*, 331 F.2d 842, 846 (4th Cir. 1964) ("We cannot condone the attempt to connect the defendant with the crime by questionable inferences which might be refuted by undisclosed and unproduced documents then in the hands of the police. . . . [T]his procedure passes beyond the line of tolerable imperfection and falls into the field of fundamental unfairness." (quotation marks and citation omitted)).

We conclude the State suppressed favorable evidence that was material to the case. Accordingly, we reverse the denial of Liggins's second application for postconviction relief and remand for entry of an order vacating Liggins's conviction and granting him a new trial. *See Harrington*, 659 N.W.2d at 525. In light of our disposition of the suppression issue, we find it unnecessary to address the newly-discovered evidence question raised by Liggins.

REVERSED AND REMANDED.