

SUPREME COURT OF ARKANSAS

No. CR-95-150

JOHNNY MILLS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 15, 2018

PRO SE MOTION TO REINVEST
THE TRIAL COURT WITH
JURISDICTION TO CONSIDER A
WRIT OF ERROR CORAM
NOBIS; ALTERNATIVELY
ISSUANCE OF A WRIT OF
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DISSENTING OPINION.

JOSEPHINE LINKER HART, Justice

I would grant Mr. Mills’s petition to reinvest jurisdiction in the circuit court to consider Mr. Mills’s petition for a writ of error coram nobis. Mr. Mills’s murder conviction was based almost entirely on circumstantial evidence and certain admissions that Mr. Mills supposedly made to a fellow inmate that were supposedly overheard by a jailhouse snitch, Mike Barter. *Mills v. State*, 322 Ark. 647, 910 S.W.2d 682 (1995). The *Mills* court stated:

Mike Barter, who was in the Lawrence County jail because of a drug conviction and fifteen-year sentence, testified that he overheard Mills say that “they had killed this girl and raped her and everything in Walnut Ridge.” Robert White, who was incarcerated at the time of trial for burglary and theft, testified that Mills told him that he “and Home Boy raped her [a girl in Walnut Ridge] and killed her.” White added that Mills said “they took a gun and shot her five times.”

322 Ark. at 653–54, 910 S.W.2d at 687. In a footnote, the *Mills* court stated, “Both Barter and White were in jail with Mills when they heard these statements. The prosecutor did not allow the fact that Mills was apparently in jail on another offense to come before the jury.”

Id. at 654 n. 2, 919 S.W.2d at 686 n. 2.

In his petition, Mr. Mills alleges what appears to be a clear *Brady* violation—the State withheld information that showed it was impossible for Mills to confess to Robert White at the time specified by testimony in his trial. Mr. Mills claims that Arkansas Department of Correction records show that he was not incarcerated in the same place as White and that he could not have had physical contact with White at that time.

I am mindful that a writ of error coram nobis is a narrow remedy and that this court allows the writ to issue “only under compelling circumstances to achieve justice and to address errors of the most fundamental nature.” *Howard v. State*, 2012 Ark. 177, at 4, 403 S.W.3d 38, 43. Further, this court has held that a writ of error coram nobis is available to address certain errors that are found in one of four categories: (1) insanity at the time of trial, (2) a coerced guilty plea, (3) material evidence withheld by the prosecutor, or (4) a third-party confession to the crime during the time between conviction and appeal. *Id.* However, this case falls under the third exception, material evidence withheld by the State, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

In *Lacy v. State*, 2010 Ark. 388, at 24–25, 377 S.W.3d 227, 241, this court stated that there are three components to a *Brady* violation: “(1) the evidence must be favorable to the accused, either because it is exculpatory, or because it is impeaching; (2) that evidence must have been suppressed by the state, either willfully or inadvertently; and (3) prejudice must have ensued.” Certainly, if Mr. Mills had been provided the Arkansas Department of Correction documents showing that he and White were not incarcerated together at the time he made his supposed admissions, it would likely have had a material effect on his trial, both as exculpatory evidence and as powerful facts with which to impeach Mike Barter on cross-examination.

Accordingly, I respectfully dissent.