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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 BILLY JOVAN SAIZ,

Case No. 2:23-cv-01228-ART-BNW

Petitioner,

6 v.

ORDER GRANTING
MOTION FOR DISCOVERY

7 BRIAN E. WILLIAMS, SR.,

[ECF No. 23]

8 Respondents.
9

10 This habeas matter is before this Court on counseled petitioner Billy Jovan
11 Saiz's motion for discovery. (ECF No. 23.) Respondents opposed the motion, and
12 Saiz replied. (ECF Nos. 34, 38.) For the reasons discussed below, the Court grants
13 the motion.

14 **I. Background**

15 On January 16, 2020, following a guilty plea, Saiz was adjudged guilty of
16 battery with the use of a deadly weapon and ownership or possession of a firearm
17 by a prohibited person. (ECF No. 29-32.) Saiz was sentenced as a habitual
18 offender to two concurrent terms of 84 to 240 months in prison. (*Id.*) Saiz
19 petitioned the state court for post-conviction relief. (ECF No. 30-10.) The state
20 court denied Saiz post-conviction relief, Saiz appealed, and the Nevada Court of
21 Appeals affirmed. (ECF No. 30-35.)

22 Saiz commenced this federal habeas action on August 4, 2023. (ECF No.
23 1.) This Court granted Saiz's motion for appointment of counsel and appointed
24 the Federal Public Defender to represent Saiz. (ECF Nos. 16, 18.) Saiz requests
25 discovery of the following:

- 26 1. Leave to subpoena the Las Vegas Metropolitan Police
27 Department for any and all records and/or evidence
28 related to this case (Event No. 180909-0037).
2. Leave to subpoena the Clark County District Attorney's
Office for any and all records and/or evidence related to

1 this case (Eighth Judicial District Court Case No. C-18-
2 336703-1 and A-20-818017-W; Las Vegas Justice Court
3 Case No. 18F17014X), including but not limited to any
4 and all records and/or evidence that the DA's office
turned over to the defense, or should have turned over
to the defense, during the state court proceedings.

5 (ECF No. 23.) Saiz contends that there is good cause to request these items
6 because disclosure of this information may support a claim that his plea was
7 involuntarily entered, that the State violated *Brady v. Maryland*, and/or that
8 Saiz's trial counsel was ineffective. (*Id.*)

9 **II. Governing Law**

10 Rule 6(a) of the Rules Governing § 2254 Cases provides that “[a] judge may,
11 for good cause, authorize a party to conduct discovery under the Federal Rules
12 of Civil Procedure.” In *Bracy v. Gramley*, the Supreme Court held that Rule 6 was
13 meant to be applied consistently with its prior opinion in *Harris v. Nelson*, which
14 expressly called for the adoption of the rule. 520 U.S. 899, 904, 909 (1997). In
15 *Harris*, the Supreme Court held that “where specific allegations before the court
16 show reason to believe that the petitioner may, if the facts are fully developed, be
17 able to demonstrate that he is . . . entitled to relief, it is the duty of the court to
18 provide the necessary facilities and procedures for an adequate inquiry.” 394 U.S.
19 286, 300 (1969). In *Bracy*, a unanimous Supreme Court overturned a decision
20 denying discovery where the petitioner's claim of judicial bias in his particular
21 case was based on “only a theory,” where the claim was “not supported by any
22 solid evidence” with regard to the theory, and where the Supreme Court expressly
23 noted that “[i]t may well be, as the Court of Appeals predicted, that petitioner will
24 be unable to obtain evidence sufficient to support” the theory that the petitioner
25 sought to pursue in the discovery. 520 U.S. at 908, 909. The Ninth Circuit,
26 consistent with *Bracy* and *Harris*, has held that habeas discovery is appropriate
27 in cases where the discovery sought only might provide support for a claim. *See*,
28

1 e.g., *Pham v. Terhune*, 400 F.3d 740, 743 (9th Cir. 2005); *Jones v. Wood*, 114
2 F.3d 1002, 1009 (9th Cir. 1997); *Osborne v. District Attorney's Office*, 521 F.3d
3 1118, 1133 (9th Cir. 2008), *rev'd on other grounds in District Attorney's Office v.*
4 *Osborne*, 557 U.S. 52 (2009).

5 **III. Analysis**

6 Saiz contends that his trial counsel did not receive the State's complete
7 discovery in the months leading up to his guilty plea, and he still does not have
8 it. (ECF No. 23 at 2.) Indeed, Saiz explains that numerous important pieces of
9 police-generated evidence are missing from his trial counsel's file, including body-
10 worn camera footage from the immediate aftermath of the shooting and
11 documentation of law enforcement's search for surveillance footage of the
12 shooting. (*Id.*) Saiz's current counsel attempted to retrieve information from the
13 Las Vegas Metropolitan Police Department without a subpoena and received four
14 pieces of evidence that were not present in Saiz's trial counsel's file, prompting
15 Saiz's current counsel to inquire about other missing evidence. (*Id.* at 6–7.)

16 Respondents oppose Saiz's motion for discovery, arguing that (1) the
17 motion is premature given that Saiz has yet to file his amended petition, (2) the
18 request for discovery is based on speculation, (3) the request is not narrowly
19 tailored to any of his legal claims, and (4) he was not diligent in trying to obtain
20 the requested evidence in state court. (ECF No. 34.) Saiz rebuts that (1) it serves
21 judicial economy for him to review the missing discovery now so that he may raise
22 developed claims stemming from the receipt of the discovery materials in his
23 amended petition, (2) his motion is based on thorough investigation and records
24 review, (3) his request is narrowly tailored to a claim that the State withheld
25 evidence, and (4) he was not granted a post-conviction evidentiary hearing, was
26 incarcerated, and was unrepresented during state post-conviction proceedings,
27 making it impossible for him to have obtained the requested evidence in state
28 court. (ECF No. 38.)

1 As Saiz makes clear, the items sought are not new evidence and are sought
2 to support a *Brady*-related claim. Although Respondents argue that Saiz fails to
3 state good cause for obtaining the items requested, they do not deny that there
4 are materials which have not been provided to Saiz, that Saiz was legally entitled
5 to these materials, that these materials would have been accessible to trial
6 counsel, or that these materials could show that Saiz may be entitled to relief on
7 his forthcoming amended habeas petition. As such, this Court concludes that
8 Saiz has established good cause under Rule 6(a) for the discovery sought.

9 **IV. Conclusion**

10 It is therefore ordered that the motion for discovery **[ECF No. 23] is**
11 **granted.**

12 It is further ordered that Petitioner Billy Jovan Saiz may pursue discovery
13 as follows: (1) subpoena(s) to the Las Vegas Metropolitan Police Department for
14 any and all records and/or evidence related to Event No. 180909-0037; and (2)
15 subpoena(s) to the Clark County District Attorney's Office for any and all records
16 and/or evidence related to Eighth Judicial District Court Case Nos. C-18-
17 336703-1 and A-20-818017-W and Las Vegas Justice Court Case No.
18 18F17014X, including but not limited to any and all records and/or evidence that
19 the DA's office turned over to the defense, or should have turned over to the
20 defense, during the state court proceedings.

21 It is further ordered that Saiz file a status report on the earlier of completion
22 of discovery or within 60 days. Saiz will have 30 days from the completion of
23 discovery to file and serve his amended petition or any other appropriate motion.

24 Dated this 3rd day of January 2025.

25 

26
27 ANNE R. TRAUM
28 UNITED STATES DISTRICT JUDGE