

Stephen Carl Allwine,

Petitioner,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER DENYING DISCOVERY
MOTIONS ON PETITION FOR
POSTCONVICTION RELIEF**

vs.

State of Minnesota,

Respondent.

Court File No. 82-CR-17-242

FINDINGS OF FACT

1. On March 11, 2022, Petitioner filed a Petition for Postconviction Relief.
2. On March 11, 2022, Petitioner also filed the following:
 - **A Request for Disclosure of Discovery by the State of the following information:**

Reports from the following individuals on the following dates (hard copies):

Officer Phillips – 1/17/2017

Officer Weber - 1/17/2017

Detective McAlister - 1/18/2017; 1/20/2017; 1/25/2017; 1/30/2017;

2/08/2017; 2/09/2017; 2/14/2017; 2/14/2017 @ 1338; 3/2/2017;

3/20/2017; 3/20/2017 @ 0935; 3/23/2017; 3/24/2017; 4/7/2017;

3/24/2017 @ 1241; 4/10/17; 4/14/2017; 6/05/2017; 7/24/2017; 9/07/2017

Detective Clausen – 1/18/2017; 3/20/2017

Detective Zerwas – 11/21/2016

Officer Jagodzinski – 11/15/2016 to 11/22/2016

Investigative Aide McCabe - 1/30/2017; 3/2/2017

Officer Sorgaard - 1/31/2017

Detective Torguson – 11/16/2016; date of activity 1/23/2017, date submitted 9/28/2017

Detective Landkamer - 2/16/2017; 6/15/2017; 9/08/2017; 11/08/2017; 3/02/2017

Hard copies of Culver's surveillance screen captures;

Hard copies of Department of Homeland Security Reports;

Hard copies of lab reports #1 - #10;

Hard copies of Blockchain reports of Bitcoin addresses starting with:

lAAgpu
l35fsz
lFUzli
lHGnHk

Any additional Blockchain reports that have been received;

Hard copies of trailcam images from 11/13/16;

Hard copies of email exchanges between FBI agents (Chris Boeckers and Asher Silkey, and Amy Allwine);

Soft copy of 2016-724 Stephen Allwine Transcript;

Soft copies of Incoming/Outgoing Text Message Detail for:
651-552-0136, 651-253-8105, 651-247-3345, 612-201-0856, and 347-266-3487;

Soft copies of Cellebrite and Oxygen reports for:
Lucid3-ALA, Galaxy S5-SCA, Galaxy S7-SCA, iPhone 6s-SCA,
and iPhone 6s-ALA;

Image of device 22 - Lexar 32GB SD;

Any additional discovery that has been received after 8/09/2019; and

Any additional material in the possession of the prosecuting attorney or their agents that tends to negate or reduce the guilt of the accused as to the offense charged.

- **A Request for subpoenas for the following individuals to testify at an evidentiary hearing on the Petition:**

Dr. Jonathan Arden
Arden Forensics
1390 Chain Bridge Road #105
McLean, VA 22101

Kristen Elmquist
1027 Tanney Lane
Hudson, WI 54016

Elder Arias (or supervisor for Sunday shift)
Optanix
251 Salina Meadows Parkway
Syracuse, NY 13212

John Carney
Carney Forensics
Scandia, MN 55073

Requests for the Court to issue subpoenas duces tecum to obtain the following information:

Mark Lanterman
Computer Forensics Services
601 Carlson Parkway #1250
Minnetonka, MN 55305

- Hard copy list of all cases for which he has qualified as an expert witness, to include parties involved and date;
- Bitcoin address from Samsung Galaxy s5;
- Hard copy of Amy Allwine's outlook calendar events for 2016; and
- Hard copy of email and text communication between Amy Allwine and Kristen Elmquist.

Ramsey County Medical Examiner's Office
300 East University Avenue
St. Paul, MN 55130

- Hard copy of Investigator's (Jonathan Banks) notes in the death investigation of Amy Louise Allwine (DOB:12/10/72) and hard copy of emails regarding the death investigation of Amy Louise Allwine (DOB 12/10/72) – case 2016-3000

Pets R Inn
7625 Metro Boulevard, Suite 120
Minneapolis, MN 55439

- Hard copy of any and all boarding records for the dogs of Stephen or Amy Allwine:

7624 110th Street South, Cottage Grove, MN 55016
7480 Glen Road, Woodbury, MN 55129
7901 Barbara Avenue, Inver Grove Heights MN 55075

4 Love of Dogs
1027 Tanney Ln.
Hudson, WI 54016

- Hard copy of any and all boarding records for the dogs of Stephen or Amy Allwine:

7624 110th Street South, Cottage Grove, MN 55016
7480 Glen Road, Woodbury, MN 55129
7901 Barbara Avenue, Inver Grove Heights MN 55075

3. Petitioner requests that the Court determine a briefing schedule as to the “discovery, subpoenas, and the memorandum of law associated with this Petition.”

4. On March 18, 2022, the case was assigned to this Court.

5. On March 22, 2022, the State filed a letter notifying the Court that it forwarded a copy of the Petition to the State Appellate Public Defender’s Office. The State requested an extension of time to file a response to the Petition.¹

6. On March 23, 2022, Cathryn Middlebrook, Chief Appellate Public Defender, filed a letter indicating that Petitioner is ineligible for appellate public defender services because of his prior appeal.

7. The March 22, 2022, letter indicates that the State does not intend to provide Petitioner with the requested discovery because Petitioner is not entitled to discovery in a postconviction proceeding and because the State has already provided the discovery to Petitioner’s private trial counsel and to his private appellate counsel.

8. On March 31, 2022, Petitioner filed a motion to compel discovery. Petitioner contends that he is entitled to discovery “upon defense request” pursuant to Minn. R. Crim. P. 9.01.

CONCLUSIONS OF LAW

1. Petitioner’s request for subpoenas for individuals to testify at an evidentiary hearing is premature. The Court will decide in a subsequent order after the State has had an opportunity to

¹ The State’s March 22, 2022, letter requesting an extension of the briefing schedule was not forwarded to the Court for review until March 30, 2022, which was one day before the State’s response was due.

On March 30, 2022, the Court’s law clerk sent an email to the County Attorney indicating that the Court granted the State’s request for an extension to file a response to the Petition and that the Court would issue an Order on Petitioner’s discovery requests which would include a due date for the State’s response. Since Petitioner is incarcerated and self-represented, he was not copied on the email. This is permitted *ex parte* communication [Rule 2.9 Code of Judicial Conduct – *ex parte* communications for scheduling purposes are permitted.]

file a response to the Petition whether to grant Petitioner’s request for an evidentiary hearing. If the request for an evidentiary hearing is granted, the Court will decide in that order whether testimony from those individuals listed in the subpoenas will be allowed.

2. Minn. R. Crim. P. 9.01 provides that a “prosecutor must, at the defense's request and before the Rule 11 Omnibus Hearing, allow access at any reasonable time to all matters within the prosecutor's possession or control that relate to the case.”

3. The State has a duty to disclose exculpatory evidence to the defense from the filing of charges until the trial has ended. *State v. Allwine*, 963 N.W.2d 178, 189 (Minn. 2021)(citing Minn. R. Crim. P. 9.01 and 9.03).

4. The Rules of Criminal Procedure, including Rule 9 which regulates discovery, apply to prosecutions. Minn. R. Crim. P. 1.01. A postconviction proceeding is not a prosecution. Petitioner has already been tried and convicted.

5. “A criminal defendant proved guilty after a fair trial does not have the same liberty interests as a free man. At trial, the defendant is presumed innocent and may demand that the government prove its case beyond reasonable doubt. But [o]nce a defendant has been afforded a fair trial and convicted of the offense for which he was charged, the presumption of innocence disappears.” *District Attorney’s Office for Third Judicial District v. Osborne*, 557 U.S. 52, 68-69; 129 S.Ct. 2308, 2320; 174 L.Ed.2d 38 (2009).

6. The Brady duty to disclose does not extend to post-conviction proceedings, and there is no general due process right to discovery after conviction. *Id.*

7. Minn. Stat. §590.01, subd. 1a permits access to fingerprint and forensic DNA testing, which was not available at trial, but it does not otherwise authorize a right to discovery in a postconviction proceeding. Petitioner, who has the burden of proof in a postconviction proceeding, has failed to establish that he is entitled to the discovery sought from the State or the requests for discovery in the subpoenas duces tecum.² Postconviction “procedures were not devised to permit parties to engage in legal games or to permit a petitioner to embark upon unlimited and undefined discovery proceedings.” *State v. Thompson*, 170 N.W.2d 101, 104 (Minn. 1969).

² The Court may revisit the requests for discovery in the subpoenas duces tecum if the Court grants Petitioners request for an evidentiary hearing.

8. Minn. Stat. §590.03 does not provide for further responsive pleadings after the State files a response to a postconviction petition “except upon order of the court.” The Court does not find good cause exists to allow Petitioner to file a “reply” to the State’s response to his 93-page Petition. Thus, Petitioner’s request for an extended briefing schedule beyond the date that the State’s response is due is denied.

ORDER

1. The State shall have until **Friday, May 6, 2022**, to serve and file a response to the Petition. The record will close on Friday, May 6, 2022, and the Court will take the matter under advisement on that date.
2. Petitioner’s request for the State to disclose discovery is **DENIED**.
3. Petitioner’s motion to compel is **DENIED**.
4. Petitioner’s requests for subpoenas for witnesses to testify at an evidentiary hearing are **DENIED** as premature.
5. Petitioner’s requests for subpoenas duces tecum are **DENIED**.
6. Petitioner’s request to submit a reply to the State’s response to the Petition and/or supplement the Petition is **DENIED**.
7. The court administrator shall provide a copy of this Order on Petitioner, the County Attorney and on the Attorney General.

BY THE COURT:

Dated: _____

Douglas B. Meslow
Judge of District Court