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SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

P.O. BOX 746
COURTHOUSE
GEORGETOWN, DE 19947

October 23, 2000

VIA FACSIMILE AND U.S. MAIL

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Re: State v. Brent Webb
9907021071

Dear Counsel:

In the interests of justice, defendant Brent Webb ("Webb" or "Defendant") is granted a new trial on the first seven counts of the indictment.

Nature and Stage of the Proceedings

On January 12, 2000, a jury convicted Webb of three counts of aggravated menacing, one count of conspiracy in the second degree, one count of unlawful sexual contact in the third degree, one count of offensive touching, and three counts of possession of a firearm during the commission of a felony ("PFDCF"). Pending before the Court is the February 24, 2000, motion of defendant for either Judgment of Acquittal under Superior Court

Criminal Rule 29 ("Rule 29")[1] or for a new trial under Rule 33.[2] A hearing was held on September 29, 2000 to consider Webb's motion, at which time this Court announced that it would decide this matter on October 20, 2000. The Court rendered its decision in open court, and this opinion memorializes it.

Facts

These charges arose from a dispute that Webb and a co-defendant, John Yocum ("Yocum"), had with the victims, visitors at Yocum's house, over a missing sum of money which Yocum accused the victims of stealing. The precise chronology of the events, and exactly who performed certain acts, are in dispute as there are several different versions of events. Apparently, the victims, Rae Carpenter ("Carpenter"), Amanda Kessler ("Kessler"), and Anthony Falloni ("Falloni") went from a residence in Denton, Maryland to Yocum's

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[1]The Rule states, in pertinent part:
Motion for judgment of acquittal.
(c) Motion after discharge of jury. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion of judgment of acquittal may be made or renewed within 7 days after the jury is discharged or within such further time as the court may fix during the 7-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal.

[2]Rule 33 states, in pertinent part:
New Trial.
The court on motion of a defendant may grant a new trial to that defendant if required in the interest of justice . . . A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 7 days after verdict or finding of guilty or within such further time as the court may fix during the 7-day period.

house near Greenwood, Delaware. Carpenter spent most of the time inside visiting with Yocum, while Kessler and Falloni waited outside, though Kessler came inside briefly to use the bathroom. While inside, Carpenter helped Yocum straighten a large stack of money sitting on the table.

According to Carpenter's trial testimony, when her visit concluded Carpenter went outside to leave and began talking with Webb, who had just arrived. While she was still visiting with Webb, Yocum, who was extremely angry, exited the house and accused Carpenter of stealing fifty dollars from the pile of money that was on the table. Yocum, Webb, and Carpenter went back inside the residence to look for the money and Kessler and Falloni remained outside.

When they did not find the money, Yocum produced a gun and threatened to shoot somebody if he did not get his money back. According to Carpenter's trial testimony, Webb then told her that he was going to search her, and he proceeded to feel underneath her clothing while Yocum held the gun. Carpenter testified that Webb said he had been "waiting a long time to play with your titties." According to Carpenter's trial testimony, when Webb failed to find the money on Carpenter's person, Yocum stated that Kessler must have taken it when she came inside.

Thereafter, Webb went outside and Yocum searched Carpenter's shoes. Carpenter then used the restroom and she and Yocum went outside. Carpenter testified that when she left the house, she saw Webb searching Kessler, who looked "uncomfortable." Webb then

searched Falloni's car, but still did not find the money. The three visitors thereafter left and returned to Denton. Yocum and Webb arrived in Denton a short time later and insisted on getting the money back. After they argued with the victims and left, Carpenter called the Denton police. A Denton police officer, Joseph Conneely ("Conneely"), took Carpenter's complaint and referred her to the Delaware State Police.

The above version of the facts is based on Carpenter's trial testimony. However, Officer Conneely's report indicates that Carpenter told him a different version of events and this is the new evidence that Webb asserts entitles him to a new trial under Rule 33. Officer Conneely's report contained several facts that differed from Carpenter's trial testimony. According to the report, Carpenter stated that "Yocum put his hands inside of Carpenter's clothing to search for the missing money. [She] stated that Yocum then displayed a handgun and aimed it at the head of her friend Tony." The report does not state anything about the search of Kessler and does not mention that Webb searched Carpenter.

In yet another version of the events, Kessler testified that Webb arrived while she and Falloni were sitting in the car and went inside. When he came back out a short time later he told her to get out of the car and proceeded to search her clothing. In contrast to Carpenter's statements, Kessler stated that Yocum was in the house during the search and that no gun was present during her search. Her testimony regarding the search of the car – i.e. that Webb searched the car and not Falloni – is the same as Carpenter's.

Falloni testified that Webb arrived, went in the house, and came back out with Carpenter and Yocum, although he later admitted that he was not completely sure that Yocum was present with the gun when Webb searched Kessler. He also related that Webb was trying to calm Yocum down and that Webb did not threaten anyone.

After the searches (the money was not found), the victims returned to the residence in Denton, Maryland, and Carpenter reported one version of the incident to a Denton police officer. A Delaware State Police report delivered to Webb's trial counsel by the State mentioned this initial contact between Carpenter and Officer Conneely: "The Denton police (Officer Conneely) then showed up and they told him what happened and he told them to come to Delaware to report the incident." However, the report itself remained in the hands of the Denton police department until Yocum's trial counsel requested it from the State.

Webb did not obtain the report until after his trial, when Timothy Willard, Esquire, Yocum's trial counsel, faxed it, on February 16, 2000, to Webb's attorney (who was retained after Webb's conviction and replaced Webb's trial counsel). Mr. Willard requested a copy of the police report at case review on February 15.[3] Stephanie Tsantes, Esquire, prosecutor for both Webb and Yocum, contacted the chief investigating officer who telephoned the Denton police department and obtained a copy of the report later that day. She immediately sent Mr. Willard a letter stating that she "reviewed the police report, and there is no

[3]Transcripts of Yocum's case review on February 15 and court proceedings on February 16 on the subject of Carpenter's statements in Denton are made part of the Webb record. The parties referenced these proceedings at oral argument on September 29.

information contained therein that is arguably Brady." However, she provided Mr. Willard with a copy of the Denton police report.

On February 16, 2000, after the jury was picked, Mr. Willard requested a continuance to explore statements made by Carpenter in the narrative part of the report. He also expressed his intention to subpoena Conneely. The State opposed his request, arguing that he was in possession of the Delaware State Police Reports which contained Officer Conneely's name for several months and that he should have not waited until the day before trial to request Conneely's report. Given the possible importance of the information for a jury to weigh, the Court granted the continuance.

Webb argues Carpenter's statements should have been disclosed to him by the prosecutor prior to his trial.

Discussion

1. Rule 29 Judgment of Acquittal

Webb's Motion for Judgment of Acquittal under Superior Court Criminal Rule 29 is denied because he did not raise it within the seven-day time limit specified in subsection (c). Webb did not file this motion until February 24, 2000, even though the jury returned its verdict on January 12, 2000. At oral argument on September 29, the defense acknowledged this application was barred under Delaware case law.

2. New Trial Claims

In the alternative, Webb requests that the Court grant him a new trial as permitted under Superior Court Criminal Rule 33, which allows a new trial if required in the "interest of justice." Webb makes two arguments for a new trial: the jury's verdict was against the weight of the evidence and there is new evidence that could produce a different result if the Court grants a new trial.

The first argument is based on Hutchins v. State, Del. Supr., 153 A.2d 204 (1959), which holds that the question of whether the evidence supports the jury's verdict is left to the discretion of the trial judge. This motion for a new trial based on lack of evidence must fail. The jury had an opportunity to hear the evidence, weigh the veracity of the witnesses, and listen to and consider Webb's defense, and it found that the State's evidence was strong enough to support the verdict. This Court will not disturb the jury's decision, and this motion is likewise time-barred. See Maxion v. State, Del. Supr., 686 A.2d 148 (1996); State v. Halko, Del. Super., 193 A.2d 817 (1963), aff'd Del. Supr., 204 A.2d 628 (1964).

The new evidence to which Webb refers is the information contained in the Denton police report. Webb did not learn about Carpenter's statements to Conneely until after his trial, when he received them from Yocum's attorney. Carpenter's statements differ from other ones she gave to the Delaware police and in her trial testimony. Specifically, Carpenter told Officer Conneely that Yocum did not produce the gun until after Yocum and Webb searched Carpenter, that Yocum later had the gun outside the residence, and that

Yocum only pointed the gun toward Falloni. Webb asserts that this report would have been admitted as independent, substantive evidence under 11 Del. C. § 3507[4] which, in addition to impeaching Carpenter, could have been used to exculpate Webb of the charges involving Aggravated Menacing, PFDCF, and conspiracy.

The standard for what constitutes "new evidence" under Rule 33 is set out in State v. Hamilton, Del. Super., 406 A.2d 879 (1974) (citing Delaware v. Lynch, 128 A. 565 (Del.Term.R.1925)):

> In order to warrant the granting of a new trial on the ground of newly discovered evidence, it must appear (1) that the evidence is such as will probably change the result if a new trial is granted; (2) that it has been discovered since the trial and could not have been discovered before by the exercise of due diligence; (3) that it is not merely cumulative or impeaching.[5]

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[4]The statue reads, in pertinent part:

Use of prior statements as affirmative evidence.

(a) In a criminal prosecution, the voluntary out-of-court prior statement of a witness who is present and subject to cross-examination may be used as affirmative evidence with substantive independent testimonial value.

(b) The rule in subsection (a) of this section shall apply regardless of whether the witness' in-court testimony is consistent with the prior statement or not. The rule shall likewise apply with or without a showing of surprise by the introducing party.

See Delaware v. Washington, Del. Super., Cr. A. Nos. IN91-01-0558-0560, Gebelein, J. (Oct. 15, 1992) (holding that voluntary out-of-court statements, even if partly impeaching, may also be substantive evidence under 11 Del. C. § 3507(a)).

[5]While the standard established in Hamilton and Lynch is that new evidence must be such that it is exculpatory and that an acquittal is *probable* in the retrial, the Delaware Superior Court has allowed new evidence in cases where the new evidence would impeach the credibility of a witness and the Court has found that the witness deliberately testified falsely at trial, but where an acquittal on retrial is only *possible*. Delaware v. Washington, Del. Super., Cr. A. Nos. IN91-01-0558-0560, Gebelein, J. (Oct. 15, 1992). However, in the present case, Defendant does not suggest that Carpenter, whose statements were recorded by the Denton police officer, falsified her testimony.

Although both the defendant and the State frame their positions in terms of this test, defendant is actually asserting a violation of Brady v. Maryland, 373 U.S. 83 (1963) which has a different test than the one set out in Hamilton. See State v. Augustine, Del. Super., Cr. A. Nos. IN-91-09-1557, et al., Herlihy, J. (June 16, 1995) (choosing between a Brady and Hamilton analysis).

The Lynch and Hamilton cases concern evidence that is discovered after trial but was not known and could not have been known prior to trial, even through the exercise of due diligence. By contrast, a Brady violation concerns evidence that existed at the time of trial but was not known to the defendant. A Brady violation occurs when the prosecution fails to disclose evidence favorable to an accused upon request "when the evidence is material either to guilt or to punishment, irrespective of the good or bad faith of the prosecution." Michael v. State, Del. Supr., 529 A.2d 752, 755 (1987). The three components of a Brady analysis are: "The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." Strickler v. Green, 119 S.Ct. 1936, 1948 (1999).

Because the evidence Webb asserts should have been disclosed existed at the time of trial, the Brady analysis must be used, rather than the Lynch test.[6] Thus the Court must

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[6]Another major difference between the two tests is that while Hamilton uses an outcome determinative test, that is, that the outcome would have been different if the evidence was available, Brady merely asks whether the disclosure violation undermines the confidence in the outcome of the trial. Kyles v. Whitley, 514 U.S. 419, 434 (1995).

decide whether a prosecutor's failure to turn over to Defendant information in a police report from another jurisdiction constitutes a violation of Brady. A further question is whether the nondisclosure was excused by the fact that discovery materials given to Defendant indicated that a report may exist.

The first step of the Brady analysis requires the Court to evaluate whether the evidence is favorable to the accused, either because it is impeaching or exculpatory. The State concedes that Carpenter's statements to Officer Conneely are impeaching. Thus the first prong of the Brady test is met.[7]

In the next step of the Brady analysis, the Court must ask whether the State suppressed the evidence. The suppression may be either purposeful or inadvertent for purposes of Brady. It is well-settled that "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police" even if the evidence was known only to the police and not the prosecutor. Kyles v. Whitley, 514 U.S. 419, 437-38 (1995). The reasoning behind placing the burden on the prosecution to produce exculpatory statements is that the police are, like the prosecutor, agents of the State. Ray v. State, Del. Supr., 587 A.2d 439 (1991).

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[7]The evidence is also exculpatory in that it shows there was no gun present at the time Webb searched Carpenter and Kessler, thus challenging the Conspiracy, Aggravated Menacing, and PFDCF charges. The closeness in time between when these statements were made and the events they described may give them greater reliability, as with excited utterances. Of course, the jury may believe Carpenter's in-court statements over those to Conneely, but for the purposes of this prong of the Brady analysis, the Court is concerned only with the exculpatory nature of the evidence in itself.

Whether the Kyles rule extends to situations where the police are in another jurisdiction or the evidence is held by a state agency other than the police is a more difficult question. "The duty to produce requested evidence falls on the state; there is no suggestion in Brady that different 'arms' of the government are severable entities." Martinez v. Wainwright, 5th Cir., 621 F.2d 184, 186 (1980) (holding that the state's failure to give defendant a witness's rap sheet that was in the possession of the medical examiner was a violation of Brady). Yet courts recognize that a general responsibility to find any and all exculpatory materials may be too great a burden on prosecutors. Thus the threshold question is, once the material is requested by the defendant, can the State acquire it through reasonable means? Courts have "declined to excuse non-disclosure in instances where the prosecution has not sought out information *readily available* to it." U.S. v. Perdomo, 3rd Cir., 929 F.2d 967, 970 (1991) (emphasis added). "If the State either has in its actual possession or *has access to* the [requested records], Brady, of course, would mandate disclosure of those records to a defendant who requests them." Boyer v. State, Del. Supr., 436 A.2d 1118, 1126 (1981) (emphasis added). See also, U.S. v. Brooks, D.C. Cir., 966 F. Supp. 1500, 1503 (1992) (citing the close working relationship between the local police and the U.S. Attorney as the reason the prosecution was not excused from disclosing exculpatory material).

Here, the information in the Denton police report was readily available to the State, even though the prosecution was not actually in possession of it. The State acquired the

report quite easily. Ms. Tsantes stated at the September 29 hearing that she simply called her investigating officer who in turn called Denton. The report was in the State's possession one phone call and several hours after it was requested by Yocum's attorney. Although Brady does not require a specific request for the material, U.S. v. Bagley, 473 U.S. 667, 682 (1985), Yocum's attorney made the request because the events that occurred in Maryland (when Webb and Yocum went to the victims' house) were going to be an issue in the Yocum trial (they were not an issue in the Webb trial).[8] Under these circumstances, this Court finds that the State had easy access to exculpatory material in the hands of the Denton police, so that it had an obligation under Brady to provide this material.

The State contends that because the officer's name was in the Delaware State Police records, it fulfilled its duty to turn over the Brady material prior to trial. However, police reports are not routinely turned over because of Superior Court Criminal Rule 16; thus, the burden of disclosure of exculpatory information contained in a police report must be on the State in this situation. "A contrary holding would enable the prosecutor 'to avoid disclosure of evidence by the simple expedient of leaving relevant evidence to repose in the hands of

[8]At the September 29 hearing, Mr. Willard stated that he "knocked on the door a little harder" in order to get the police report. Mr. Willard told the Court that he was interested in the Maryland police report because the State was going to introduce evidence of what transpired in Denton as a prior bad act in its case against Yocum. Mr. Willard also stated that he had the opportunity of hindsight with the Webb case to see what strategy and evidence worked and what did not. Webb's trial counsel however, did make a request for Brady material before trial.

another agency while utilizing his access to it in preparing his case for trial.'" Martinez v. Wainwright, 5th Cir., 621 F.2d 184, 188 (1980), citing, U.S. v. Trevino, 5th Cir., 556 F.2d 1265, 1272 (1977).

Unlike Defendant, the State had ready access to the information. In addition, the name of a potentially exculpatory source of information (here, Officer Conneely) contained within standard discovery materials is not the exculpatory material itself (i.e. Carpenter's account of the incident). This problem is especially pertinent here, where the Delaware State Police report stated "they told [Conneely] what happened" giving the misimpression that all of the victims made statements and that these statements were the same as what they told the Delaware State Police. The Delaware report does not mention that a report ever existed. This Court finds that the mention of Conneely's name in the Delaware State Police report was not sufficient to discharge the State's Brady obligation under these circumstances, so Webb has satisfied the second of the three Brady prongs.

The third and final Brady component examines the prejudice suffered by defendant being deprived of favorable information. This prong concerns whether the undisclosed evidence was "material," which is whether "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." U.S. v. Bagley, 473 U.S. 667, 682 (1985). Although this Court cannot speculate with certainty what the outcome of the trial would have been had the evidence been disclosed, it must take an approach such as the following:

> In evaluating the materiality of the non-disclosed Brady information, Bagley requires reviewing courts to directly assess any adverse effect that the prosecutor's failure to disclose might have had on the preparation or presentation of the defendant's case. The reviewing Court must also assess the effect of the nondisclosure given the totality of the circumstances.

Michael v. State, Del. Supr., 529 A.2d 752, 757 (1987). The test of the extent of the prejudice suffered by Defendant "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." Kyles v. Whitley, 514 U.S. 419, 434 (1995). Furthermore, Brady is not a sufficiency of the evidence test. Id.

Here, the evidence in question is a statement by one of the three witnesses to testify against Webb and whose testimony at trial was also the longest and most inculpatory of all. Except for the gun, the State's evidence was composed entirely of the statements by the victims and the investigating officers. Had the information in the police report been turned over by the prosecution, it would have been admitted under 11 Del. C. § 3507 as substantive, independent evidence. If the jury believed that Officer Conneely recorded Carpenter's statements accurately (an issue that the State would have had an opportunity to challenge at trial), it would be confronted with a version of the events that directly challenges Carpenter's in-court statements and supports Webb's testimony at trial. Upon considering the nature of the State's evidence, the central role played by Carpenter in the trial, and the major differences in the police report and Carpenter's testimony, this Court finds that her

statements in the police report are material, and their absence undermines the confidence in the jury's verdict.

Because the Brady material concerns the timing of the threats directed at the victims, the nature of the accomplice relationship between Webb and Yocum, and the use of the gun, all of the counts relating to the menacing, possession of the firearm, and conspiracy were affected by the nondisclosure of the report. U.S. v. Mathies, 3rd Cir., 350 F.2d 963, 967 (1965) (holding that an error in admitting evidence relating to one count "so pervaded the entire trial that a new trial [was] required" upon the other counts). Strickland v. Washington, 466 U.S. 668, 695-96 (1984) which recognized the Brady materiality test as set out in U.S. v. Agurs, 427 U.S. 97, 104 (1976), states that a court evaluating prejudice from a constitutional violation must:

> consider the totality of the evidence before the judge or jury. ... Some errors will have a pervasive effect on the inferences to be drawn from the evidence, altering the entire evidentiary picture. ... Moreover, a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support.

This Court finds that the exculpatory nature of the information contained in the police report has pervaded all of the counts concerning the possession of the firearm, the menacing, and conspiracy, especially considering the reliance by the State on the victims' testimony.

The pervasive nature of the exculpatory material is further pertinent because the State was trying Webb under an accomplice liability theory. The prosecutor asserted in her closing

argument that "as to all of them, Rae Carpenter, Amanda Kessler, and Tony Falloni, it is the State's allegation that John Yocum was waving that gun and placing them in fear of physical injury, and Brent Webb's actions in concert with that were aiding and abetting and in fostering that criminal conduct." In effect, the State made Webb Yocum's alter ego.

On the other hand, the victims related that Webb was acting like a peacemaker, did not touch the gun, and did not threaten them, which weakens the State's position. The absence of mens rea precludes accomplice liability, and a person's "mere presence at the time and place of the commission of a crime, or his knowledge that a crime is being committed or is about to be committed, without more, does not make him an accomplice." Charles E. Torcia, Wharton's Criminal Law, § 38 (15th ed. 1993). More than passive involvement is required and the requisite culpable mental state must be proven to impose accomplice liability. See 11 Del. C. § 271. See also, People v. Skinner, N.Y. Supr., 593 N.Y.S.2d 293, 294 (1993) (reversing defendant's conviction for criminal possession of a weapon, stating "although the defendant's conduct suggested that he may have known that [co-defendant] Kool-Aid had a gun, there was no proof that the defendant solicited, requested, commanded, importuned, or intentionally aided him to possess the gun"), People v. Rayside, N.Y. Supr., 590 N.Y.S.2d 521 (1992) (dismissing the weapon possession count because, "the People's reliance on the acting-in-concert theory is unavailing, since there was no proof that the defendant solicited,

requested, commanded, importuned, or intentionally aided [the co-defendant] to possess the gun.").[9]

Likewise, in Delaware, something more than physical presence is necessary. In Brooks v. State, Del. Supr., 367 A.2d 638, 639 (1976), accomplice liability was found for an active participant in a robbery for possession of a deadly weapon during the commission of a felony. Additionally, defendant told his co-defendant, who actually possessed the gun, to kill the victim. Because of the nature of Delaware law on accomplice liability and the theory under which the State prosecuted Webb, the Brady violation affected the first seven counts. On the other hand, this spillover effect does not extend to the Offensive Touching and the Unlawful Sexual Contact convictions, for which Webb was solely responsible.

3. Ineffectiveness of Counsel

Aside from the Brady question, and should the State's position be accepted that Webb's trial counsel could have found the information through due diligence, this Court would grant a new trial under Superior Court Criminal Rule 61 ("Rule 61") based on the ineffectiveness of his trial counsel.[10] Although Rule 61 claims are to be considered after the

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[9]Of course, the principal question is whether Webb's actions can be tied in with Yocum's use of the gun to establish accomplice liability. This question is intensely fact driven and for a jury to decide. The cited cases illustrate, however, how the Maryland evidence places this case in a different light.

[10]See State v. Russo, Del. Super., 700 A.2d 161 (1996), aff'd, State v. Russo, Del. Supr., 694 A.2d 48 (1997). Even in direct appeals, in appropriate cases, the Delaware Supreme Court has decided ineffective assistance of counsel claims. See Lewis v. State, Del. Supr., 757 A.2d 709, 712 (2000).

direct appeal, this Court finds that under these exceptional circumstances and with the well-developed record it has before it, there would be no reason to delay a Rule 61 ruling awaiting appeal while the defendant is incarcerated.

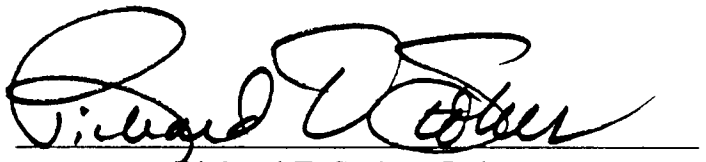
To support a claim of ineffectiveness of counsel defendant must show (1) that his attorney's performance fell below an objective standard of reasonableness and that (2) but for the counsel's errors, the outcome of the trial would have been different. Strickland v. Washington, 466 U.S. 668 (1984). The second of the two prongs of the Strickland test, the materiality standard, is the same as the materiality prong of the Brady test. It is thereby met for the same reasons discussed above. Strickland v. Washington, 466 U.S. 668, 695-96, citing U.S. v. Agurs, 427 U.S. 97, 104 (1976) The first prong would be met in that trial counsel for Webb failed to fully investigate the mention of the contact between the victims and the Denton police. Thus, even without a Brady violation, Webb would be entitled to a new trial.

Conclusion

Considering the foregoing, Defendant's Motion for a New Trial is hereby granted for counts one through seven: being the Aggravated Menacing, PFDCF, and the second degree Conspiracy counts. Because the information does not exculpate Webb of the last two counts, Unlawful Sexual Contact in the third degree and Offensive Touching, these two counts will stand. This decision speaks to the facts of this particular case. The prosecutor's role in all litigation is to seek justice. The State bears the risk when no, incomplete, or misleading

disclosures are made, and exculpatory information comes to light after the trial. Here, two cases were assigned to the same prosecutor. The facts were clearly intertwined. The complaint was referred from Denton to Delaware by a cooperating police agency that had a working relationship as demonstrated in Yocum's case. No undue burden is placed on the prosecution; this decision only means that the jury will be able to weigh all of the significant facts to justify a reliable result in our adversarial system of justice.

IT IS SO ORDERED.



Richard F. Stokes, Judge