STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PHILLIP MEON BROWN, a/k/a PHILLIP MOLEN BROWN,

Defendant-Appellant.

UNPUBLISHED
April 26, 2012

No. 302294
Washtenaw Circuit Court
LC No. 10-000741-FC

Before: HOEKSTRA, P.J., and SAWYER and SAAD, JJ.

PER CURIAM.

A jury convicted defendant of domestic assault, second offense, MCL 750.81(3), and, for the reasons set forth below, we affirm.

Defendant argues that the prosecutor violated *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963), when it failed to disclose a letter from the victim in which she asked the prosecutor to drop the charges against defendant.[1] The trial court denied defendant's motion for a new trial on this ground. We review defendant's constitutional due process claim de novo. *People v Schumacher*, 276 Mich App 165, 176; 740 NW2d 534 (2007).

To establish a *Brady* violation, a defendant must prove:

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[1] The following is the relevant text of the June 4, 2010 letter:

> I have been informed that I have the right to input in the sentencing of Phillip Brown, case No. CRW 10-741-FH.
>
> I would, at this time, like to exercise that right, and ask that all charges against Mr. Brown be dropped on my behalf.
>
> No one has threatened me into making this request, I am doing so of my own free will.

> (1) that the state possessed evidence favorable to the defendant; (2) that the defendant did not possess the evidence and could not have obtained it himself with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different. [*People v Lester*, 232 Mich App 262, 281; 591 NW2d 267 (1998).]

Defendant has not established that the letter was actually favorable to defendant. The letter does not state that defendant is innocent of the crime. Rather, it merely states that the victim did not want charges to continue against him.

Defendant argues that the letter was nonetheless important to his defense because the prosecution's only witness was weak. However, the failure to disclose impeachment evidence does not require automatic reversal, even if, as here, the case against the defendant depends in large part on the credibility of a single witness. *Lester*, 232 Mich App at 281. The trial court must find the impeachment evidence material, and generally, "impeachment evidence has been found to be material where the witness at issue supplied the only evidence linking the defendant to the crime or where the likely effect on the witness' credibility would have undermined a critical element of the prosecutor's case." *Id.* at 282. "[A] new trial is generally not required where the testimony of the witness is corroborated by other testimony or where the suppressed impeachment evidence merely furnishes an additional basis on which to impeach a witness whose credibility has already been shown to be questionable." *Id.*

Here, the victim's testimony was not the only evidence linking defendant to the crime. Both the victim's neighbor and the investigating officer provided corroborating evidence. Further, while the letter may have constituted impeachment evidence, defense counsel already highlighted inconsistencies in the victim's statements about the crime. Thus, the evidence would have merely amounted to "an additional basis on which to impeach" the victim's testimony. *Id.* This does not create a "reasonable probability . . . that the outcome of the proceedings would have been different." *Id.* Accordingly, the trial court correctly denied defendant's motion for a new trial.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Henry William Saad