

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE	)	
	)	
	)	
v.	)	ID # 0801010328
	)	
	)	
CLIFFORD WRIGHT,	)	
	)	
	)	
Defendant.	)	

Submitted: September 18, 2009  
Decided: September 30, 2009

On Defendant Clifford Wright's Motion to Dismiss  
**DENIED**

**MEMORANDUM OPINION**

Steven P. Wood, Esquire, Ipek Medford, Esquire, Department of Justice,  
Wilmington, Delaware, Attorneys for the State

Jerome M. Capone, Esquire, Brian J. Chapman, Esquire, Wilmington,  
Delaware, Attorneys for Defendant Clifford Wright

**JOHNSTON, J.**

Defendant Clifford Wright filed a Motion to Dismiss alleging that the State failed to timely produce *Brady* materials.<sup>1</sup> The Court heard oral argument on September 18, 2009, and has reviewed the parties' submissions. Although the State suppressed or delayed production of certain evidence favorable to the Defendant, the evidence was not material as required for disclosure under *Brady*. Defendant's Motion to Dismiss must be denied.

### **FACTUAL CONTEXT**

Defendant Clifford Wright was indicted on two counts of first degree murder and related offenses. The State is seeking the death penalty. Wright was arrested and charged with the murders of Tamela Gardner and Gabriel Gabrielli on July 13, 2006.

In a letter dated October 27, 2008, Wright's counsel requested that the State disclose all *Brady* material. Wright's counsel noted his suspicion that the prosecution was "calling this a close case because there may be another person, or persons, with a motive . . . perhaps as to Mr. Gabrielli."

On August 31, 2009 the State mailed a letter to Wright's counsel containing a compact disc recording of New Castle County Detective Tom

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<sup>1</sup> See *Brady v. Maryland*, 373 U.S. 83 (1963).

Abram's April 2, 2009 interview with Mr. Gabrielli's son, Corey Gabrielli.<sup>2</sup>

The State also attached an August 27, 2009 police report describing the interview.

In that interview, Corey Gabrielli discussed his suspicions that his stepmother, Diane Gabrielli, may have been involved in his father's murder. Diane Gabrielli was the beneficiary of Gabriel Gabrielli's \$750,000 life insurance policy. Corey alleged that following his father's death, Diane Gabrielli purchased a car, valued at approximately \$5,000, for her friend David Spence. Corey suspected that this gift was payment for a murder for hire.

Corey also recounted an incident in Philadelphia, approximately two years before the murders, in which two men threatened the lives of Diane Gabrielli and her children. Corey stated that his father was in debt to one of these men for \$10,000. He was unable to recall where in Philadelphia these threats were made or the exact names of these men. He knew one was named "Muhammad" and the other may have been named "Rasheeky."<sup>3</sup>

Corey admitted that he did not have firsthand knowledge of any inculpatory behavior by Diane Gabrielli. He also admitted that he did not

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<sup>2</sup> Defense counsel stated that they first saw the letter on September 8, 2009.

<sup>3</sup> See Ct. Ex. 2 ("CG (Corey Gabrielli): Something with an R, yeah. I don't know if it's Rasheeky. (Inaudible) I know the main guys (*sic*) name was Muhammad though...I don't know if it was Rasheeky. It was something weird (inaudible) with a (*sic*) R and it had like a Y.").

have a good relationship with his stepmother and stated that she had refused to provide him with regular financial support. Approximately 2.5 hours after his initial interview, Corey again contacted Detective Abram to recant his accusations. He apologized for “wasting [Detective Abram’s] time” and stated that his accusations were a result of his lack of involvement in the investigation and his frustration with his stepmother regarding the life insurance proceeds.

On September 11, 2009 the State mailed a second letter to Wright’s counsel containing a September 17, 2008 report by Detective Abram. Detective Abram reported that he interviewed a woman (Person A) at the Haverford Township Police Department in Havertown, PA. She informed him that her daughter, later identified as Samantha Crail, was in a relationship with a man named Andrew Lawton. Lawton’s parents were the owners of Havertown Auto Body, where Gabriel Gabrielli had once worked. Person A notified Detective Abram that, following a domestic altercation between Crail and Lawton, Crail stated that Lawton had once mentioned that his uncle, Gordon Lawton, had murdered Gabrielli and Ms. Gardner.

When asked about her statements, Crail informed Detective Abram that “she had never heard anyone admitting to being involved in the murders.” Andrew Lawton stated that “he never said that his uncle, Gordon

Lawton, was involved in the murder of Gabriel Gabrielli.” He also stated that his uncle had been estranged from his parents for several years, had no affiliation with the auto body shop, and had never met Gabrielli.

Andrew Lawton also spoke with Detective Abram regarding Lawton’s belief that two men from Philadelphia who came to Havertown Auto Body searching for Gabrielli had committed the murders.<sup>4</sup> The pair complained that they had paid Gabrielli for auto work that he never completed. The men filed a police report complaining about Gabrielli. Lawton advised Detective Abram that the men remarked that “they were going to pin this murder on [Gabrielli’s] ex-wife because she had received \$650,000 in life insurance.” Lawton stated that he did not know their names. He believed that they were the owners of the Lagossa Restaurant in Philadelphia.

Wright did not contest the State’s assertion that Lawton also had spoken with Wright’s investigator about these men. According to the State, Lawton spoke with the investigator several times about Gabrielli. Prior to the State’s disclosure, Andrew Lawton was listed on Wright’s witness list.

### **BRADY**

In *Brady v. Maryland*, the United States Supreme Court held that the prosecution cannot suppress evidence favorable to a defendant if that

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<sup>4</sup> The descriptions of these two men differ from those of “Muhammad” and “Rasheeky.” Neither the State nor Wright has alleged that these men are the same men described by Corey Gabrielli.

evidence is material either to guilt or to punishment.<sup>5</sup> If the evidence is both favorable and material, a determination must be made whether its “delayed disclosure precluded... effective use of the information at trial.”<sup>6</sup>

The prosecution’s suppression of evidence favorable to an accused violates due process where that evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.<sup>7</sup> However, the prosecution has no obligation to communicate preliminary, challenged or speculative information or information already known to the defense or presented to the court.<sup>8</sup>

Initially, the defendant must demonstrate three elements: (1) the prosecution suppressed or withheld evidence; (2) the evidence is favorable to the defense; and (3) the evidence is material to the defense.<sup>9</sup> If the prosecution has withheld favorable and material evidence, the Court then must determine if that suppression denied the defendant the opportunity to use the material effectively, and if so, the appropriate remedy.<sup>10</sup>

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<sup>5</sup> *Brady*, 373 U.S. at 87.

<sup>6</sup> *Lilly v. State*, 649 A.2d 1055, 1057 (Del. 1994).

<sup>7</sup> *Brady*, 373 U.S. at 87.

<sup>8</sup> *United States v. Agurs*, 427 U.S. 97, 109 n.16 (1976) (quoting *Giles v. Maryland*, 386 U. S. 66, 98 (1967) (Fortas, J., concurring)).

<sup>9</sup> *Moore v. Illinois*, 408 U.S. 786, 794-95 (1972).

<sup>10</sup> *Rose v. State*, 542 A.2d 1196, 1199 (Del. 1988) (“When a defendant is confronted with delayed disclosure of *Brady* material, reversal will be granted only if the defendant was denied the opportunity to use the material effectively.”).

### *A. Suppression by the State*

In *Brady*, the U.S. Supreme Court held that the prosecution's active suppression of evidence, known to be favorable to the defense, violated due process.<sup>11</sup> Other courts have extended *Brady* and declined to excuse discovery violations in instances where the prosecution failed to seek out and disclose information readily available to it.<sup>12</sup> Further, an individual prosecutor is presumed to have knowledge of all information gathered in connection with the government's investigation.<sup>13</sup> "[L]ack of knowledge does not render information unknown for *Brady* purposes."<sup>14</sup> The prosecution is obligated to produce *Brady* evidence both actually and constructively in its possession.<sup>15</sup>

However, *Brady* does not require the government to provide defendants with evidence they could otherwise obtain by exercising reasonable diligence.<sup>16</sup> Evidence is not considered suppressed if the

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<sup>11</sup> *Brady*, 373 U.S. at 84 ("Prior to the trial petitioner's counsel had requested the prosecution to allow him to examine Boblit's extrajudicial statements. Several of those statements were shown to him; but one dated July 9, 1958, in which Boblit admitted the actual homicide, was withheld by the prosecution and did not come to petitioner's notice until after he had been tried, convicted, and sentenced, and after his conviction had been affirmed.").

<sup>12</sup> *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) ("Prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.").

<sup>13</sup> *State v. Spence*, 1997 WL 720679, at \*3 (Del. Super.) (citing *United States v. Payne*, 63 F.3d 1200, 1208 (2d Cir. 1995)).

<sup>14</sup> *U.S. v. Perdomo*, 929 F.2d 967, 970 (3d Cir. 1991).

<sup>15</sup> *United States v. Auten*, 632 F.2d 478, 481 (5th Cir. 1980).

<sup>16</sup> *Flonnory v. State*, 893 A.2d 507, 532 (Del. 2006) ("[T]he [State] will not be found to have suppressed material information if that information also was available to a defendant through the exercise of reasonable diligence."); see also *United States v. Brown*, 582 F.2d 197 (2d Cir. 1978) (no *Brady* violation

defendant either knew or should have known of the essential facts permitting the defense to take advantage of any exculpatory evidence.<sup>17</sup>

### ***B. Favorable and Material Evidence***

The second and third elements of a valid *Brady* claim are that the information must be favorable *and* material to the defense.<sup>18</sup> The U.S. Supreme Court has clarified *Brady* by requiring disclosure of evidence that “might have affected the outcome of the trial.”<sup>19</sup> In *United States v. Bagley*, the U.S. Supreme Court defined material evidence as evidence with “a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome.”<sup>20</sup> The *Bagley* inquiry requires consideration of the totality of the circumstances, including possible effects of non-disclosure on defense trial preparation.<sup>21</sup>

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where defense counsel was made aware of witness' contradictory statements shortly after the opening of trial and was able to use him as a witness on defense's behalf).

<sup>17</sup> *United States v. McKenzie*, 768 F.2d 602, 607-11 (5th Cir. 1985) (no *Brady* violation for prosecution's failure to turn over videotape, where defendants were aware of its existence before trial, did not move for discovery, and could have subpoenaed a witness' attorney for it).

<sup>18</sup> *Moore*, 408 U.S. at 786.

<sup>19</sup> *United States v. Agurs*, 427 U.S. 97, 105 (1976).

<sup>20</sup> 473 U.S. 667, 668 (1985).

<sup>21</sup> *Id.* at 682-83.



## ANALYSIS

### *Corey Gabrielli's April 2, 2009 Interview*

The Court finds that under the first two prongs of the *Brady* analysis, the State suppressed evidence that was favorable to the Defendant. Detective Abram conducted this interview on April 2, 2009. This information was not disclosed to Wright's counsel until August 31, 2009. In that interview, Corey suggested that his mother had a motive to kill his father and had paid a friend \$5,000, which Corey assumed was compensation for the murder. Corey also suggested that two men from Philadelphia had threatened Diane Gabrielli and her children because of Gabriel Gabrielli's debts. Information implicating other persons, with motives to murder the victim, obviously is favorable to the defense. The delay from April 2, 2009 until August 31, 2009, with disclosure less than a month before trial, constitutes suppression by the State under the circumstances of this case.

Under the third prong, the duty to disclose arises if the evidence is material to the defendant's guilt or punishment.<sup>22</sup> Usually, "*Brady* requires the prosecution to produce evidence that someone else may have committed

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<sup>22</sup> *Moore*, 408 U.S. at 794.

the crime.”<sup>23</sup> In *State v. Comer*, this Court stated that “*Brady* violations have occurred when the State did not turn over information that a witness told the police that another person was the killer, that the victim was killed because he ripped off a mob boss, or that another person admitted to the crime.”<sup>24</sup> But, in the three examples to which *Comer* refers, “the police had concrete information about another suspect, and [the Court determined that] the State should have disclosed it.”<sup>25</sup> In the instant case, the issues of materiality -- as to Diane Gabrielli’s possible involvement and the threats made by the men in Philadelphia -- must be analyzed separately.

### 1. Information about Diane Gabrielli

During his interview with Detective Abram, Corey Gabrielli admitted that he had a troubled relationship with his stepmother, and that his accusations were not grounded in anything “other than [his] own speculation.” He added that he had “no material evidence pointing to anything,” and “no honest reason that [he] could directly accuse Spencer (*sic*).” Shortly after his interview, Corey left a message for Detective Abram retracting his accusations, citing his frustrations with his stepmother and the police. He stated that he “made those accusations up” and that they were

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<sup>23</sup> *State v. Comer*, 2007 WL 313574, at \*4 (Del. Super.) (quoting *Mendez v. Artuz*, 2000 WL 722613, at \*13 (S.D.N.Y)).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

“all fantasies of [his] mind [that] spawned out of the anger and frustration.” During a subsequent telephone conversation, he admitted that “everything [he] was talking about was speculation” and requested that the police refrain from questioning Diane Gabrielli regarding his accusations.

In *Agurs*, the U.S. Supreme Court noted that there is “no constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on a case.”<sup>26</sup> As Justice Fortas noted in his concurring opinion in *Giles v. Maryland*, the prosecution has no obligation to “communicate preliminary, challenged, or speculative information”<sup>27</sup> to the defense but is obligated to notify the defense of specific, factual, and concrete [information, even if] its implications may be highly debatable.”<sup>28</sup>

It is apparent from the audio recording of Corey Gabrielli’s interview, his admissions therein, and his subsequent remarks to Detective Abram that his accusations were not specific, factual, or concrete. They were purely speculative. Therefore, the State had no obligation under *Brady* to communicate them to Wright.

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<sup>26</sup> *Agurs*, 427 U.S. at 109 (quoting *Moore*, 408 U.S. at 795).

<sup>27</sup> *Giles*, 386 U. S. at 98 (Fortas, J., concurring).

<sup>28</sup> *Id.*

## 2. Information About Two Men

Corey stated that the threats made by “Muhammad” and “Rasheeky” were made at least two years prior to the murders. He could not identify where these threats were made or the exact names of the men responsible. He did not have firsthand knowledge as to why his father was in debt or the amount owed.

Corey claimed his stepmother told him his father was hiding from the men and that she kicked Gabriel out of her house because of the threats. Corey subsequently admitted that he was speculating as to the reason Diane Gabrielli kicked his father out of the house. According to the State, Diane Gabrielli stated that “the only time [she] heard about [the two men in Philadelphia] was some time in either 2003, 2004.” Wright did not contest this assertion.

Additionally, the threats were made against Diane Gabrielli and her children, not against Gabriel Gabrielli. Neither the State nor Wright has produced any evidence suggesting that either of these two figures had any involvement in the deaths of Gabriel Gabrielli and Tamela Gardner, knew Gabriel Gabrielli was residing in Delaware at the time of his death, or made any effort to contact him after the incident in Philadelphia.

The alleged threats are simply too remote in time to the murders to be material. If Diane Gabrielli, or any witness or evidence, could corroborate that Gabriel Gabrielli had been in hiding for two years to evade the two men, this information might have been material. However, the nebulous threats, more than two years before the murders, are too attenuated to require disclose as *Brady* material.

Notwithstanding the Defendant's request for information as to persons with a motive to murder Gabriel Gabrielli, the "mere possibility that an item of undisclosed information might have helped the defense . . . does not establish 'materiality' in the constitutional sense."<sup>29</sup> "[E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."<sup>30</sup> Here, the information remains vague, speculative, remote in time and location, and uncorroborated by any other evidence or witness.

The test for materiality includes an examination of such factors as the "admissibility of the evidence at trial, extent of its probative value, the cumulative nature of the evidence, and the weight of other evidence at trial."<sup>31</sup> To be considered "material as to guilt or punishment," the evidence

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<sup>29</sup> *Agurs*, 427 U.S. at 109-10.

<sup>30</sup> *Bagley*, 473 U.S. at 682; *Michael v. State*, 529 A.2d 752, 756 (Del. 1987).

<sup>31</sup> *State v. Bodnari*, 2002 WL 32071664, at \*4 (Del. Super.) (quoting *Turner v. State*, Del. Super., No. 91-08-0126, 91-08-0127, 91-08-0128, Graves, J. (May 20, 1993), at 20)).

must be admissible or Wright must successfully show the Court “on the record (trial or post-trial) that [the suppressed evidence] would have, or could have led to admissible evidence.”<sup>32</sup> Under the circumstances, the information about the two men is neither admissible, nor reasonably susceptible of leading to admissible evidence.

### *Gordon Lawton*

The Court finds that the State suppressed favorable evidence by failing to disclose Person A’s statements to the Haverford Township Police Department. These statements, however, are neither material to Wright’s guilt nor to his possible punishment. Therefore, the State was under no obligation to provide the defense with this material.

Person A lacked any firsthand knowledge of the purported statements made by Andrew Lawton, or of any inculpatory behavior by Gordon Lawton. Person A’s testimony would be inadmissible as hearsay. Samantha Crail lacked any firsthand knowledge regarding Gordon Lawton’s inculpatory behavior and denied making any comments implicating Gordon Lawton. Andrew Lawton also denied making any such comments and stated that Gordon Lawton never met Gabriel Gabrielli. Wright has not shown

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<sup>32</sup> *Stokes v. State*, 402 A.2d 376, 381 (Del. 1979); see also *U.S. v. Kennedy*, 890 F.2d 1056, 1059 (9th Cir. 1989) (“To be material under *Brady*, undisclosed information or evidence acquired through that information must be admissible.”) (citing *Brady*, 373 U.S. at 89-90; *United States v. Oxman*, 740 F.2d 1298, 1311 (3d Cir. 1984), *vacated on other grounds*, 473 U.S. 922 (1985); *United States v. Ranney*, 719 F.2d 1183, 1190 (1st Cir. 1983) (“Inadmissible evidence is by definition not material [for *Brady* purposes], because it never would have reached the jury and therefore could not have affected the trial outcome.”)).

how Person A's statement could have led to admissible evidence. Therefore, his *Brady* claim as to Person A's statement is denied.

***Andrew Lawton***

On October 22, 2008, Andrew Lawton telephoned Detective Abram to inform him that he would be willing to cooperate with this investigation. He stated that he had already spoken with an FBI agent about his belief that Gabriel Gabrielli had been killed by two men from Philadelphia who came into Havertown Auto Body upset that Gabrielli had stolen money from them. The State alleged that this "FBI agent" was actually Wright's private investigator, a former FBI agent named Mario Campana. Wright has not challenged this allegation. Additionally, both Andrew Lawton and his father, Curtis Lawton, appear on the Defendant's witness list.

In *Flonnory v. State*, the defendant, Freddy Flonnory, was tried and convicted of first degree murder, and sentenced to death.<sup>33</sup> Prior to his trial, the State provided the defense with a copy of a videotaped statement wherein a taxi driver observed that the defendant and his accomplice, Korey Twyman, were in possession of semi-automatic weapons and neither had a revolver. The State theorized that Flonnory had used a revolver during the crime. The State also provided Flonnory with a transcript of the taxi

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<sup>33</sup> *Flonnory v. State*, 893 A.2d 507 (Del. 2006).

driver's statement, but this transcript omitted the observation regarding the semi-automatic weapons and the revolver. Prior to Twyman's trial, the State provided Twyman with an amended version of the transcript which correctly documented the taxi driver's statements. Flonnory argued that but for the State's *Brady* violation, the outcome of his trial would have been different.

The Delaware Supreme Court found Flonnory's argument unpersuasive. "[T]he [State] will not be found to have suppressed material information if that information also was available to a defendant through the exercise of reasonable diligence."<sup>34</sup> The Court held that the "State did not violate its *Brady* obligations by producing an inaccurate transcription of [the taxi driver's] statement before [Flonnory's] trial, because it also provided an accurate videotaped copy of [the statement.]"<sup>35</sup> Had the defense exercised reasonable diligence and reviewed the videotape in conjunction with the transcript, it could have uncovered the error.

In this case, defense counsel already were aware of Andrew Lawton's beliefs regarding the two men from Philadelphia. Lawton relayed that information to Wright's investigator before informing Detective Abram. Detective Abram also noted that Lawton "believed that the two guys who came into the shop owned a restaurant in Philadelphia known as the Lagossa

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<sup>34</sup> *Flonnory*, 893 A.2d at 532 (quoting *United States v. Morris*, 80 F.3d 1151, 1170 (7th Cir.1996)).

<sup>35</sup> *Id.* at 532.



Restaurant.” The defense knew from Lawton that someone other than Wright may have had a motive to kill Gabriel Gabrielli. Had they asked Lawton, who is listed on the defense’s witness list, for more information regarding the men, they would have learned the name of the Lagossa Restaurant.

### CONCLUSION

The State suppressed Corey Gabrielli’s accusations of his stepmother; Corey’s statements regarding the alleged threats made by two men;<sup>36</sup> and the statements of an undisclosed witness relaying Andrew Lawton’s statement regarding his uncle made to a third party. This evidence, although favorable to Wright, is not material as defined by *Brady*. Corey’s statements are vague, speculative, remote in time and uncorroborated. The statement regarding Andrew’s uncle is inadmissible hearsay and not reasonably calculated to lead to admissible evidence under the circumstances.

The Defendant was aware of Andrew Lawton’s statements regarding the two men<sup>37</sup> Lawton suspected of murdering Gabriel Gabrielli. The Defendant had the means to contact them with the exercise of reasonable diligence. Therefore, the State did not suppress or withhold favorable evidence material to the defense.

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<sup>36</sup> This is the first set of men.

<sup>37</sup> This is the second, and different, set of men.

**THEREFORE**, Defendant Clifford Wright's Motion to Dismiss is hereby **DENIED**.

**IT IS SO ORDERED.**

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The Honorable Mary M. Johnston