

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)		
)		
v.)	ID Nos.	1812014043; &
)		1812006782
)		
JOSHUA CIRWITHIAN,)		
)		
Defendant.)		

ORDER

Upon consideration of Defendant Joshua Cirwithian’s (“Defendant”) Motion to Dismiss, the principles underlying *Brady v. Maryland*¹ and its progeny, including *Kyles v. Whitley*,² and the record in this case, **IT APPEARS THAT:**

1. The Defendant argues that the State committed a *Brady* violation when it failed to disclose a note indicating that the Chief Investigating Officer decided to not interview a potential witness at the advice of a State’s witness.
2. The State, upon receipt of the officer’s notes on the second day of the bench trial, turned over the notes to defense counsel.
3. Counsel had sufficient time to review the notes and indeed was able to question the officer on the contents of the notes, specifically the officer’s

¹ 373 U.S. 83 (1963).

² 514 U.S. 419 (1995).

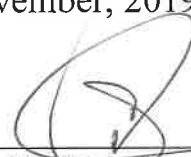
decision not to interview a witness at the advice of another witness, during the Defense's Case in Chief.

4. The Defense argued throughout the duration of the trial that the Officer for the State failed to adequately investigate the case in several respects, and in this instance, homed in on the officer's failure to interview a witness.
5. The Defendant, relying on *Kyles v. Whitley*, argues that the failure to investigate this witness amounted to a *Brady* violation. The Court disagrees.
6. At best, the facts and circumstances surrounding the investigation indicate that the non-pursuit of the potential witness was a slovenly decision, rather than a conscientious one, but unlike the circumstances present in *Kyles*, the Defense was able to utilize that information in its argument during the bench trial to suggest that the State's evidence against Defendant should be given limited weight and the asserted, less than thorough police investigation be considered against the probative force of the State's evidence.

7. The Court did take those factors into consideration in reaching its verdict. Thus, the limitation of such opportunity, that was present in *Kyles*, is absent in Mr. Cirwithian's case. He cannot claim the prejudice that was found in *Kyles*.

For the foregoing reasons, Defendant's Motion to Dismiss is hereby **DENIED**.

IT IS SO ORDERED this 4th day of November, 2019.



Sheldon K. Rennie, Judge

Original to Prothonotary

cc: Joshua Cirwithian (SBI #00530762)