

RENDERED: DECEMBER 21, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000944-MR

JIMMIE DALE CRAMER

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE ANDREW C. SELF, JUDGE
ACTION NO. 08-CR-00833

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, J. LAMBERT AND K. THOMPSON, JUDGES.

THOMPSON, K., JUDGE: Jimmie Dale Cramer appeals from an order of the Christian Circuit Court denying his motion for relief under Kentucky Rules of Criminal Procedure (RCr) 11.42 after an evidentiary hearing. Cramer argues the trial court erred when it concluded his right to due process was not violated when information that defense counsel could have used to impeach the Commonwealth's

chief witness was not disclosed. We conclude the Commonwealth did not fail to disclose material impeachment evidence.

On October 2, 1987, the body of Corrina Mullen was found in a vehicle parked near a Central City garage. An autopsy revealed that Mullen's injuries were extraordinarily brutal, having been beaten and stabbed. The murder remained unsolved after the initial suspect, Jimmy Springer, was tried and acquitted.

In 2005, Kentucky State Police learned Samantha Robinson had information about an unsolved murder in Central City. Samantha had previously given information concerning an unrelated murder, but that information turned out to be false.

Detective Damon Fleming interviewed Samantha who informed him she was an eyewitness to Mullen's murder. Following her statement, Billy Franklin Fields, Cramer, and Jeffrey Lee Boyd were indicted.¹ Fields was convicted of murder, first-degree rape, kidnapping, first-degree sodomy, and tampering with physical evidence; Boyd was convicted of murder, first-degree rape, and kidnapping; and Cramer was convicted of first-degree manslaughter, rape, and kidnapping. *Fields v. Commonwealth*, 2009-SC-000435-MR, 2011 WL

¹ Although Samantha implicated Springer in the crime, he could not be tried again after his first trial resulted in an acquittal.

3793149 (Ky. Aug. 25, 2011) (unpublished).² Cramer was sentenced to a total of sixty-years' imprisonment.

The substantive content of Samantha's testimony describing the murder was summarized by the Kentucky Supreme Court in *Fields*:

On the evening of October 1, 1987, Robinson, then sixteen-years old, was standing outside her residence when two men abducted her. The men, later identified as Fields and Boyd, grabbed and forced her into their car. They drove her to the apartment where Mullen and Smith lived and took her into the residence. Mullen, Smith, Cramer, Springer, and another man that Robinson could not identify were inside.

Fields began to argue with Mullen. Robinson was unsure of what the argument was about, but testified it could have been about Mullen's supposed pregnancy. Fields then took Mullen into a bedroom and Boyd pushed Robinson in after them. Robinson testified that, Fields continued to argue with Mullen about "opening her mouth" and told her that he was going to make sure "she got what she deserved." Fields began beating Mullen with a metal bar. He then raped Mullen, after which Cramer, Boyd, and Springer each raped her. Fields then held down Robinson and sodomized her. After that, Fields beat Mullen again and then stabbed and cut her with a knife.

Mullen, by then either dead or unconscious, was placed in the trunk of her own car. Fields ordered Robinson to drive Mullen's vehicle to the city garage in Central City, and she did so. When she arrived, Boyd was already there. Robinson places her arrival at the garage around sunrise. She testified that after parking the vehicle she fled and ran to her mother's home. She had

² We cite to this unpublished case only for the purpose of factual information.

no subsequent contact with any of the codefendants concerning her participation in the events. At the time, Robinson told only her adoptive mother what she had seen.

Id. at *2.

After his conviction was affirmed by the Supreme Court, Cramer filed a timely RCr 11.42 motion raising various allegations, including that the Commonwealth withheld information from the defense that could have been used to impeach Samantha. Because that is the sole issue presented on appeal, our discussion of the evidentiary hearing is limited to evidence regarding that issue.

In early 2009, prior to the start of the trial in the Mullen murder, Samantha's husband, Michael Robinson, entered a guilty plea in the Muhlenberg Circuit Court to possession of methamphetamine and persistent felony offender, first-degree. Ralph Vick was the Muhlenberg County Commonwealth Attorney who prosecuted Michael. Michael was represented by Steve Lamb. Vick, Lamb, Michael and Tim Coleman, the Commonwealth's attorney who tried the Mullen murder case, testified at the evidentiary hearing.

Coleman testified that prior to trial, either Vick or Lamb told him Michael may be able to assist "with something" in the Mullen murder case. Coleman and Detective Fleming later met with Michael at the Muhlenberg County Jail.

Coleman testified he made no promise to Michael regarding leniency in his Muhlenberg County case if Samantha testified at the Mullen murder trial but only indicated that if Michael gave information useful to the Mullen murder case, he would make a recommendation. He testified that Michael did not offer any information about Mullen's murder.

Coleman never spoke to Samantha about his meeting with Michael. He recalled that at the close of the evidence in the Mullen murder trial, Samantha asked Coleman, "What do you think will happen to Michael?" Coleman recalled he responded, "That's up to Mr. Vick." Coleman testified he did not inform Vick or Lamb he would not recommend leniency for Michael until after the Mullen murder trial was concluded when Vick called to ask if he had any recommendation on Michael's case. Coleman told Vick he would not give a recommendation because Michael had not provided any information.

Vick also testified at the evidentiary hearing. He recalled Lamb approached him claiming Michael may have some information about the Mullen murder. On February 23, 2009, two days before Michael entered his guilty plea to the Muhlenberg County charges, Vick sent a letter to Lamb stating he was aware Coleman was to meet with Michael. The letter stated that if Coleman believed Michael should receive "additional consideration" because of assistance he could provide in the Mullen murder case "it would in all likelihood be followed." If

Coleman did not believe such consideration was warranted, Vick would agree to Michael withdrawing his guilty plea. Vick testified that Michael's final sentencing was delayed until the Mullen murder trial was concluded. Ultimately, after the Mullen murder trial was concluded Michael was sentenced in accordance with the plea agreement.

Lamb also testified. He testified that if Michael gave Coleman useful information, Coleman would recommend leniency to Michael on his sentence in his Muhlenberg County case and that Michael's sentencing was continued to await Coleman's decision regarding recommending leniency. Lamb testified that after the Mullen murder trial concluded, Samantha contacted him claiming Coleman was to call and recommend leniency.

Michael testified he knew Samantha was to be a witness in the Mullen murder trial and he was "under the assumption" that his first-degree persistent felony offender charge would be dropped to second-degree persistent felony offender in exchange for Samantha's testimony in the Mullen murder trial. He testified that Samantha knew of his meeting with Coleman. However, on cross-examination, he was asked, "there was no statement made to you that this consideration would in exchange for Samantha's testimony, was there?" Michael responded, "No, ma'am."

In rebuttal, Coleman testified he did not tell Michael he would contact Vick to recommend leniency and he did not tell Michael his first-degree persistent felony offender charge would be reduced to second-degree persistent felony charge in exchange for Samantha's testimony in the Mullen murder trial. Coleman testified that if he made such an arrangement, he would have disclosed that fact to Cramer and the other defendants.

Following the hearing, the trial court issued a written order denying Cramer's RCr 11.42 motion. The trial court found that there was no evidence Samantha believed her testimony in the Mullen murder trial would or could secure leniency for Michael in his methamphetamine case and no promises were made to Michael in that regard. The trial court concluded Cramer failed to show any material evidence was withheld from him or that he was prejudiced by the failure to disclose information. This appeal followed.

When an evidentiary hearing is held in an RCr 11.42 proceeding and the motion is denied on appellate review, "we must defer to the findings of fact and determinations of witness credibility made by the trial judge. Thus, unless the trial court's findings of fact are clearly erroneous, those findings must stand."

Commonwealth v. Bussell, 226 S.W.3d 96, 99 (Ky. 2007) (footnotes omitted). A finding of fact based on substantial evidence will not be disturbed. *Brown v. Commonwealth*, 253 S.W.3d 490, 500 (Ky. 2008). We review the trial court's

application of law *de novo*. *Commonwealth v. Pridham*, 394 S.W.3d 867, 875 (Ky. 2012).

Cramer asserts a “*Brady/Giglio*” claim, based on the United States Supreme Court decisions in *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972). While both cases dealt with the failure of the prosecution to disclose evidence favorable to the defendant, the doctrines that emerged from those cases are somewhat different.

In *Brady*, the Supreme Court held “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady*, 373 U.S. at 87, 83 S.Ct. 1196-97. As our Supreme Court later recognized, the *Brady* doctrine has been modified so that it applies “regardless of whether or not there has been a request [for the information] by the accused[.]” *Bussell*, 226 S.W.3d at 100.

Although *Brady* addressed only exculpatory evidence, it has been expanded to include impeachment evidence as well. *Kyles v. Whitley*, 514 U.S. 419, 433, 115 S.Ct. 1555, 1565, 131 L.Ed.2d 490 (1995). *See also United States v. Bagley*, 473 U.S. 667, 676, 105 S.Ct. 3375, 3380, 87 L.Ed.2d 481 (1985). “[T]he duty to disclose encompasses impeachment as well as other exculpatory evidence.”

Bussell, 226 S.W.3d at 100. In sum, a *Brady* violation has three components:

“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. Greene, 527 U.S. 263, 281-282, 119 S.Ct. 1936, 1948, 144 L.Ed.2d 286 (1999).

A *Giglio* claim “involves an aggravated type of *Brady* violation in which the suppression of evidence enabled the prosecutor to put before the jury what he knew was false or misleading testimony[.]” *Hammond v. Hall*, 586 F.3d 1289, 1306-07 (11th Cir. 2009). In *Giglio*, the prosecution’s only witness testified at trial that no promises of immunity or leniency were made in exchange for his testimony. After the conclusion of the trial and the defendant’s conviction, defense counsel discovered that one of the assistant U.S. attorneys had, in fact, promised the witness that if he did not testify he would be prosecuted but if he did so, he may not be prosecuted. Therefore, the prosecution knew that the witness’s testimony was false. The United States Supreme Court held that “deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with ‘rudimentary demands of justice.’” *Giglio*, 405 U.S. at 153, 92 S.Ct. at 766 (quoting *Mooney v. Holohan*, 294 U.S. 103, 112, 55 S.Ct. 340, 342, 79 L.Ed. 791 (1935)).

There is no evidence that the Commonwealth knowingly used perjured testimony or failed to correct what it later learned was false testimony. As Cramer concedes, his claim arises from an alleged miscommunication between Vick, Lamb and Coleman and Samantha's belief as to what was promised Michael. Moreover, Cramer did not produce any evidence that Samantha's testimony was untrue. If Cramer has a due process violation claim at all, it must be a *Brady* claim because of the Commonwealth's inadvertent failure to disclose impeachment evidence.

As explained in *Adams v. State*, 165 Md. App. 352, 377–78, 885 A.2d 833, 848 (2005):

The entire theory of impeaching credibility by showing a testimonial bias or interest is based upon the notion of a *quid pro quo*. It is not enough that the inducement be offered (or believed to have been offered); an inducement must be acted upon for it to have affected the testimony and, therefore, the verdict. The *quid* is that the witness will cooperate with the State by testifying in a way that will help the State. The *quo* is that the State will then reward that helpful performance with some favorable treatment, such as a money payment, immunity, a lesser sentence, etc.

Here, there is no *quid* or *quo*.

Coleman testified he did not promise Michael or Samantha he would recommend leniency for Michael in exchange for Samantha's testimony. Vick's letter to Lamb indicates that any leniency afforded to Michael was conditioned on

Michael's assistance to Coleman in the prosecution of the Mullen murder by providing useful information. It was not conditioned on Samantha testifying against Cramer and his co-defendants. While Michael's sentencing was continued until after the conclusion of the Mullen murder trial, Lamb testified it was delayed so that it could be determined if Coleman would recommend leniency based on Michael giving him useful information. Finally, Michael testified no statement was made to him by anyone involved that he would receive leniency in exchange for Samantha's testimony.

Based on the testimony at the evidentiary hearing, if Samantha had a belief that her testimony would be beneficial to Michael it was mistaken. Nevertheless, Cramer argues a *Brady* violation occurred. His argument stretches the reach of *Brady* too far.

Brady applies to information "known to the prosecution but unknown to the defense." *Bussell*, 226 S.W.3d at 100 (quoting *United States v. Agurs*, 427 U.S. 97, 103, 98 S.Ct. 2392, 2397, 49 L.Ed.2d 342 (1976)). Because Samantha did not testify at the RCr 11.42 evidentiary hearing, we have no insight into what she believed when she testified at the Mullen murder trial. However, even if Samantha had an unexpressed subjective belief that Michael would benefit from her testimony, there is no evidence that the Commonwealth knew or should

have known of that belief or took any action to induce that belief. The evidence is to the contrary.

Samantha implicated Cramer and his co-defendants in the Mullen murder long before Michael was charged in Muhlenberg County. There was no reason for the Commonwealth to suspect that her trial testimony was based on a mistaken belief that Michael would receive leniency. Furthermore, there is no evidence that the Commonwealth induced her to believe such a deal had been made. There can be no *Brady* violation based on any mistaken belief Samantha may have had that her testimony would result in leniency for Michael.

There was evidence the Commonwealth discussed with Michael possible leniency if he offered information useful in the Mullen murder case and those discussions were not disclosed to Cramer or his defense counsel. However, under the *Brady* doctrine, a violation occurs only when the withheld information is material. *Brady*, 373 U.S. at 87, 83 S.Ct. at 1196-97. “[E]vidence is material ‘if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.’” *Bussell*, 226 S.W.3d at 99-100 (quoting *Kyles*, 514 U.S. at 433-34, 115 S.Ct. at 1565-66; *Bagley*, 473 U.S. at 682, 105 S.Ct. at 3383). A “reasonable probability” is “a probability sufficient to undermine confidence in the outcome.” *Id.* at 100

(quoting *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068, 80 L.Ed.2d 674 (1984)).

Had Michael testified, such information might have been material impeachment evidence. However, the Commonwealth's discussions with Michael did not constitute information that would make Samantha's testimony less credible. The possible leniency was conditioned on Michael providing information, not Samantha's testimony. The outcome of Cramer's trial would have been no different had Coleman's discussions with Michael been disclosed to Cramer or his counsel prior to the Mullen murder trial.

Cramer has made an impassioned argument that he is an innocent man convicted solely on Samantha's testimony of a horrific event that occurred almost twenty-two years earlier. However, Samantha's credibility was strongly attacked by the defense at trial and the sufficiency of the evidence for Cramer's conviction was tested on direct appeal. Our role in this post-conviction proceeding is not to revisit Samantha's credibility or the sufficiency of the evidence. It is confined to whether Cramer is entitled to the extraordinary remedy provided by RCr 11.42. We conclude he is not.

The order of the Christian Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Aaron Reed Baker
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear
Attorney General of Kentucky

M. Brandon Roberts
Assistant Attorney General
Frankfort, Kentucky