

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
SHEQUAN BRIDGEMAHON	:	
	:	
Appellant	:	No. 1878 MDA 2019

Appeal from the Judgment of Sentence Entered October 17, 2019  
In the Court of Common Pleas of Centre County Criminal Division at  
No(s): CP-14-CR-0000900-2018

BEFORE: OLSON, J., MURRAY, J., and COLINS, J.\*

MEMORANDUM BY COLINS, J.: **FILED: MAY 27, 2020**

Appellant, Shequan Bridgemahon, appeals from the judgment of sentence of 2½ to 5 years of confinement followed by one year of probation, which was imposed after his jury trial convictions for manufacture, delivery, or possession with intent to manufacture or deliver (“PWID”) and conspiracy to commit PWID.<sup>1</sup> We affirm.

This action stems from a drug-buy that occurred on May 10, 2018. Trial Court Opinion, dated January 13, 2020, at 3. “During the first day of trial, the Commonwealth presented testimony from a confidential informant,

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 35 P.S. § 780-113(a)(30) and 18 Pa.C.S. § 903, respectively.

Matthew Klingler, regarding his involvement in the case, and, in particular, his eye-witness observations relative to” the drug-buy. **Id.** at 2-3.

After Klingler testified and was excused from trial, the Commonwealth presented testimony from Detective [Joshua] Martin [of the Ferguson Township Police Department]. In his trial testimony, Detective Martin made reference to the standard procedure of the police department to take post-buy written statements from confidential informants who participate in controlled drug-buys as a way of debriefing the informant. Following Detective Martin’s testimony, counsel for one of the co-defendants requested a sidebar conference, informed the [trial c]ourt that the defense had not been provided copies of any written statements from Klingler, and requested copies of any statements to review before cross examining Detective Martin. The Commonwealth represented that it was unaware of the existence of any written statements by Klingler until the issue arose during testimony. . . . The existence of the written statements had been noted in Detective Martin’s police report, which had been provided to defense counsel in discovery, but that none of the statements had been provided.

**Id.** at 3. The trial court ordered that all statements concerning Appellant be turned over to defense counsel immediately. **Id.** The next day, “defense counsel made a motion for mistrial based on the late production of the information from the Commonwealth regarding Klingler’s May 10, 2018 . . . statement[,],” which was denied. **Id.** at 4.

Trial resumed, and defense counsel cross examined Detective Martin. The examination included questioning relative to the written statements made by Klingler, including the fact that, in contrast to his trial testimony, Klingler’s May 10, 2018 statement made no express mention of [Appellant] being present on that date. . . . After consulting with [Appellant], defense counsel informed the [trial c]ourt that [Appellant] chose not to have Klingler recalled for further cross examination, that [Appellant] understood his right to demand that Klingler return, and that [Appellant] understood there was ample trial time remaining to have Klingler recalled. An on-record colloquy was conducted to ensure [Appellant] was aware that, if he so requested, the [trial

c]ourt would require the Commonwealth to recall Klingler. [Appellant] confirmed his decision not to ask for Klingler's return.

**Id.** at 4-5 (citation to the record omitted).

On May 30, 2019, the jury convicted Appellant of PWID and conspiracy to commit PWID. On October 17, 2019, the trial court imposed the aforementioned sentence. On November 14, 2019, Appellant filed this timely direct appeal.<sup>2</sup>

Appellant presents the following issue for our review:

Did the [trial] court abuse its discretion by failing to declare a mistrial?

Appellant's Brief at 4.

Appellant specifically contends that the trial "court abused its discretion by not granting a mistrial where the Commonwealth not only failed to timely turn over exculpatory evidence but failed to mitigate the damages caused by its **Brady**<sup>[3]</sup> violation." **Id.** at 14. He continues:

Unbeknownst to the defense it was a policy of the drug task force to collect a written statement from all confidential informants following a controlled buy. . . . This policy of collecting such statements was not revealed until the

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<sup>2</sup> Appellant filed his statement of errors complained of on appeal on November 26, 2019. The trial court entered its opinion on January 13, 2020.

<sup>3</sup> **Brady v. Maryland**, 373 U.S. 83, 86-89 (1963), held that a prosecution's withholding of information or evidence that is favorable to a criminal defendant's case violates the defendant's due-process rights and that the prosecution has a duty to disclose such information or evidence.

Commonwealth's last witness testified to this policy long after Klingler had been released from his subpoena.

**Id.** at 15.

"We review the trial court's decision to deny a mistrial for an abuse of discretion." **Commonwealth v. Bedford**, 50 A.3d 707, 712 (Pa. Super. 2012) (*en banc*).

"To establish a **Brady** violation, [A]ppellant must demonstrate that: (1) the prosecution concealed evidence; (2) the evidence was either exculpatory or impeachment evidence favorable to him;<sup>[4]</sup> and (3) he was prejudiced." **Commonwealth v. Treiber**, 121 A.3d 435, 460-61 (Pa. 2015).

First, Appellant failed to demonstrate that "the prosecution concealed evidence." **See id.** at 460. "The burden rests with the appellant to prove, by reference to the record, that evidence was withheld or suppressed by the prosecution." **Commonwealth v. Roney**, 79 A.3d 595, 607 (Pa. 2013). Appellant presents no evidence and makes no reference to the record demonstrating that the Commonwealth actively concealed or suppressed Klingler's statement. **See** Appellant's Brief at 14-21. Moreover, the

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<sup>4</sup> The Commonwealth concedes that this second prong was fulfilled, as "[t]he materials, which were erroneously not provided, were impeaching, and should have been provided to defense counsel." Commonwealth's Brief at 14. The trial court "agree[d] that the Commonwealth was required to produce Klingler's May 10, 2018 statement as **Brady** material." Trial Court Opinion, dated January 13, 2020, at 6.

Commonwealth represented at trial “that it was unaware of the existence of any written statements by Klingler until the issue arose during [Detective Martin’s] testimony.” Trial Court Opinion, dated January 13, 2020, at 3. More importantly, “the [trial c]ourt accepted[] that the non-disclosure was inadvertent, and not the result of prosecutorial or police misconduct.” **Id.** at 6 n.1. Hence, Appellant has failed to establish the first prong of the test to establish a **Brady** violation, and his entire claim thereby fails.

Assuming Appellant had established the first prong, Appellant still fails to demonstrate how he was prejudiced. **See Treiber**, 121 A.3d at 461. To establish prejudice, an appellant must demonstrate a “reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” **Id.** Although Appellant suggests that he was prejudiced by not having the statement for the purposes of cross-examining Klingler, he fails to establish that it was more likely than not that the result of the proceeding would have been different had he received the statement earlier. **See id.** Additionally, any potential prejudice stemming from the lack of cross-examination of Klingler about the differences between his written statement and his trial testimony were ameliorated by defense counsel’s thorough cross-examination of Detective Martin regarding Klingler’s statements. Furthermore, the trial court gave Appellant the opportunity to recall Klingler for cross-examination about his statement, and Appellant made the strategic decision “not to avail himself of

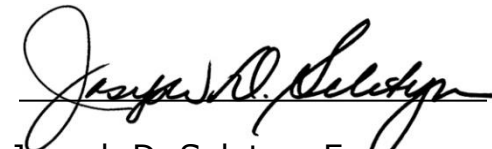
the opportunity to demand Kling[Il]er's return for further cross-examination." Trial Court Opinion, dated January 13, 2020, at 6.

Hence, Appellant has not established all three prongs required to support a **Brady** claim. **Treiber**, 121 A.3d at 460-61.

For the reasons set forth above, we conclude that the trial court did not abuse its discretion by denying Appellant's motion for a mistrial based upon the Commonwealth's alleged **Brady** violation. **See Bedford**, 50 A.3d at 712. As Appellant's sole issue on appeal is without merit, we affirm his judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above the printed name and title.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 05/27/2020