

**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

ELWOOD ROSS HOLDER,	§	
	§	No. 670, 2012
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Family Court
v.	§	of the State of Delaware,
	§	in and for Sussex County
STATE OF DELAWARE,	§	
	§	Cr. I.D. No. 1205012466
Plaintiff Below,	§	
Appellee.	§	

Submitted: September 11, 2013

Decided: October 25, 2013

Before **STEELE**, Chief Justice, **HOLLAND, BERGER, JACOBS** and **RIDGELY**,  
Justices, constituting the Court *en Banc*.

**ORDER**

This 25<sup>th</sup> day of October, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) Elwood Ross Holder appeals from his adjudication of delinquency for the attempted fourth degree rape of another juvenile. Holder argues that his adjudication should be reversed because the State withheld exculpatory evidence in violation of *Brady v. Maryland*.<sup>1</sup>

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<sup>1</sup> 373 U.S. 83 (1963).

2) The victim testified that she was five or six years old when she saw Holder, who was then 11 or 12, and his younger brother on the street. The victim lived two houses away from the Holders. She followed Holder into his house, and into Holder's room. He told her to take off her clothes, and she complied. Holder's pants were part way down, and the victim saw his penis. Holder lay down on his bed and told the victim to get on top of him. She did, and Holder's penis touched her vagina. She said it hurt. The two children stopped and put their clothes on when they heard Holder's sister coming down the hall.

3) The victim also testified that Holder's brother took her and Holder's younger step-sister into the bathroom. He told them to disrobe and to lie down on the bathroom floor. He then attempted to penetrate both girls from behind. The victim said that she saw Holder do the same thing to the step-sister.

4) In February 2012, about five years after these incidents, the victim reported what happened to her mother. The victim was interviewed at the Child Advocacy Center (CAC), and a tape of that interview was played at trial. The CAC also interviewed the step-sister, who had no memory of being abused or witnessing the victim's abuse. At the time of the incident, the step-sister was two or three years old.

5) The State provided Holder the step-sister's CAC videotape, as well as the police report summarizing the step-sister's statement. But the State redacted the step-

sister's address, and the State did not produce the step-sister as a witness at trial. Holder complains that he was unable to call the step-sister as a witness because he did not have her address. Holder says that the step-sister's statement is inconsistent with the victim's testimony and would have been important to impeach the victim's credibility. According to Holder, the State's failure to provide her address constitutes a *Brady* violation that deprived him of a fair trial.

6) Under *Brady v. Maryland*,<sup>2</sup> the State is required to disclose exculpatory evidence as a matter of due process. "There are three components of a *Brady* violation: (1) evidence exists that is favorable to the accused, because it is either exculpatory or impeaching; (2) that evidence is suppressed by the State; and (3) its suppression prejudices the defendant."<sup>3</sup>

7) Even if the first two prongs are satisfied, Holder's claim fails because Holder has not been prejudiced.

The third *Brady* factor requires that there is 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>4</sup>

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<sup>2</sup> 373 U.S. 83 (1963).

<sup>3</sup> *Starling v. State*, 882 A.2d 747,756 (Del. 2005).

<sup>4</sup> *State v. Wright*, 67 A.3d 319, 325 (Del. 2013); (internal quotations and citations omitted).

8) The step-sister's testimony would not have been exculpatory, and it would have had almost no impeachment value. The step-sister was 2 or 3 years old at the time of the incident, and she was asked about it five years later. The step-sister did not dispute the victim's account; she simply did not remember being abused. The trial court summarized the basis for its finding of no prejudice succinctly:

The [step-sister's] testimony would not have been directly relevant to whether the crime against Victim was committed. Instead, the testimony was tangentially relevant for impeachment. Even here, the probative value is minimal for several reasons. First, the testimony would not necessarily conflict with the Victim's statements, i.e., Victim remembers the incident, but [step-sister] cannot. Second, the [step-sister's] and Victim's statements could reasonably conflict without undermining confidence in Victim's testimony because, (1) Victim could reasonably have been mistaken about what happened to [step-sister], and (2) [step-sister] could reasonably have forgotten what occurred due to her young age. In short, in light of the evidence against Respondent, any alleged inconsistency in the Victim's and [step-sister's] statements regarding a separate incident in which [step-sister] was assaulted by a separate offender is not sufficient to cast doubt on Respondent's adjudication of delinquency.<sup>5</sup>

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Family Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>5</sup> Appellant's Appendix, A-99 (Order denying Motion for New Trial).