

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

STATE OF DELAWARE)
)
 v.)
)
LEVAL PETTY,)
)
 Defendant.)

ID No. 1009000052

On Defendant’s Motion to Compel the Production of
Discovery and *Brady* Information

ORDER

Defendant Leval Petty has moved to compel the production of discovery and/or *Brady*¹ material in relation to claims to be raised in his Amended Motion for Postconviction Relief. Defendant has requested that the Court order the production of three categories of information:

1. Information and notes of statements made by Kaci Moore;
2. All *Brady*, *Giglio*,² and *Roviaro*³ materials in relation to lay witnesses and their prior statements; and

¹*Brady v. Maryland*, 373 U.S. 83 (1963).

²*Giglio v. United States*, 405 U.S. 150 (1972).

³*Roviaro v. United States*, 353 U.S. 53 (1957).

3. All versions of Detective Watson and Corporal Bolden’s police reports.

The State opposes Defendant’s Motion. The parties have provided the Court with legal argument.

In the context of postconviction proceedings, the Court has the inherent discretionary authority under Rule 61⁴ to grant particularized discovery. A Rule 61 petitioner must demonstrate good cause.⁵ Good cause is established “where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that [defendant is] entitled to relief.”⁶ Speculative claims of necessity and relevance are not sufficient.

Defendant is “not entitled to go on a fishing expedition through the government’s files in hopes of finding some damaging evidence.”⁷ Postconviction discovery requests will not be approved for the purpose of permitting Defendant to conduct an investigation that might elicit evidence different from that produced at trial. An inconsistent statement is not necessarily *Brady* material. The Court will not order production merely because the materials may potentially permit arguments that

⁴Super. Ct. Crim. R. 61.

⁵*Dawson v. State*, 673 A.2d 1186, 1197-98 (Del. 1996).

⁶*Bracy v. Gramley*, 520 U.S. 899, 908-909 (1997).

⁷*State v. Jackson*, 2006 WL 1229684, *2 (Del. Super.) (quoting *Deputy v. Taylor*, 19 F.3d 1485, 1493 (3d Cir. 1994)).

defense counsel may view as strategically beneficial at this stage in the proceedings.

The Court has considered the parties' submissions, and has reviewed the relevant portions of the record. The Court makes the following rulings.

1. **Information and notes of statements made by Kaci Moore.**

All *Brady* material, not previously provided to Defendant, must be produced. If there is no additional exculpatory material in the State's possession, the State must affirmatively so inform Defendant's counsel.

2. **All *Brady*, *Giglio*, and *Roviaro* materials in relation to lay witnesses and their prior statements.**

The State has represented that it has provided all materials encompassed by this request, as required by *Bagley*.⁸

3. **All versions of Detective Watson and Corporal Bolden's police reports.**

⁸*United States v. Bagley*, 473 U.S. 667 (1985); *Dawson v. State*, 673 A.2d 1186, 1193 (Del. 1996) (Interpreting *Bagley*, the Delaware Supreme Court Stated that *Brady* contemplates that impeachment evidence be "directly favorable to the accused, rather than simply providing a basis for investigation.")

All *Brady* material, not previously provided to Defendant, must be produced. If there is no additional exculpatory material in the State's possession, the State must affirmatively so inform Defendant's counsel. Further, Defendant has failed to present specific allegations that would demonstrate good cause for production of draft police reports on the basis that other versions may have been altered to delete exculpatory information.

THEREFORE, Defendant's Motion to Compel the Production of Discovery and *Brady* Information is **GRANTED IN PART AND DENIED IN PART**.

IT IS SO ORDERED this 22nd day of May, 2014.

/s/ Mary M. Johnston
Mary M. Johnston
Judge

oc: Prothonotary
cc: Christopher S. Koyste, Esquire
Joseph S. Grubb, Esquire
Investigative Services

