

First Degree, two counts of Burglary in the First Degree, one count of Arravated Menacing, two counts of Possession of a Deadly Weapon During the Commission of a Felony, one count of assault in the Third Degree, two counts of Terroristic Threatening, and one count of Endangering the Welfare of a Child.

2. Following trial on May 18, 2010, a jury found Defendant guilty of of one count of Rape in the First Degree, one count of Rape in the Second Degree, one count of Menacing, one count of Assault in the Third Degree, two counts of Terroristic Threatening, and one count of Endangering the Welfare of a Child. Defendant was sentenced on July 23, 2010 to eighteen years at Level V, suspended after fifteen years for three years at Level IV, suspended after six months for two years at Level III. The Delaware Supreme Court affirmed Defendant's conviction on August 12, 2011.
3. Defendant file a Motion for Postconviction Relief as a self-represented litigant. Counsel was appointed to represent Defendant on December 11, 2012. Counsel requested that the State provide various discovery and *Brady* information. The State provided all materials that were previously provided to trial counsel.
4. Defendant now seeks a Court order compelling the State to produce additional information regarding its investigation. Specifically, Defendant requests: (1) all email messages and letters sent and received between trial counsel and the State relating to the case; (2) information and notes from statements made by the victim; (3) the victim's first statement to Detective Leccia, a Wilmington Police Officer; (4) all information relating to lay witnesses and their prior statements, under *Brady*, *Giglio*, and *Roviaro*; (5) information relating to the three latent fingerprints found by police at the residence where

the crime occurred; (6) production of Defendant's cell phone information and records; and (7) the victim's phone number.

5. Rule 61 does not contain a specific provision allowing Defendant to receive discovery. However, the Court possesses "inherent authority under Rule 61 in the exercise of its discretion to grant particularized discovery for good cause shown."¹ In allowing discovery, the Court will not allow a Defendant "to go on a fishing expedition through the government's files in hopes of finding some damaging evidence."² In order to determine whether a Rule 61 discovery request should be granted, the court must determine whether the Defendant has presented a compelling reason for the discovery.³
6. Under *Brady*, the United States Supreme Court held that "suppression by the prosecution of evidence favorable to an accused violates due process when the evidence is material to either guilt or punishment, irrespective of good faith or bad faith of the prosecutor."⁴ Favorable evidence is evidence that is exculpatory and impeaching, as well as explicit and implicit leniency offers to witnesses.⁵ Furthermore, the timing of the disclosure is relevant and reversal of a conviction due to a delayed disclosure of *Brady* material "will be granted only if the defendant was denied the opportunity to use the material effectively."⁶

¹ *State v. Jackson*, 2006 WL 1229684, *2 (Del. Super. Ct. May 3, 2006)

² *Id.* (citing *Deputy v. Taylor*, 19 F.3d 1485, 1493 (3d Cir. 1994).

³ *Dawson v. State*, 673 A.2d 1186, 1198 (Del. 1996) (materials requested "[were] not discoverable under a good cause standard because [defendant] has shown no compelling reason for their discovery"); see also *State v. Cabrera*, 2008 WL 3853998, *4 (Del. Super. Ct. Aug. 14, 2008).

⁴ *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

⁵ See *United States v. Bagley*, 473 U.S. 667, 675-76 (1985); *Giglio v. United States* 405 U.S. 150 (1972); *Roviaro v. United States*, 353 U.S. 53 (1957); *Jackson v. State*, 770 A.2d 506, 514 (Del. 2001).

⁶ *Atkinson v. State*, 778 A.2d 1058, 1062 (Del. 2001).

7. Defendant has failed to demonstrate a compelling reason for the discovery of the requested evidence.
8. Defendant requests from the State all email messages between trial counsel and the State. Defendant argues that trial counsel's file is not complete and that the email messages are needed to conduct a full investigation into potential Rule 61 issues. The State argues that this request is more appropriately directed to trial counsel, as trial counsel's entire file is to be made available to Rule 61 counsel. Defendant has not demonstrated good cause to require the State to turn over email messages. The Defendant is in receipt of all correspondence trial counsel had with the State, but is specifically searching for a discovery letter that "may have been misplaced." The Court will not allow Defendant to go on a fishing expedition through all of the State's email messages to find a letter that may or may not exist.
9. Next, Defendant requests information and notes of statements made by Cariely Rosado to all officers, and specifically to Detective Leccia. Defendant argues that the information and notes surrounding all statements of Ms. Rosado to Detective Leccia and other officers are discoverable because they may lead to the discovery of *Brady* information and ineffective assistance of counsel for failure to investigate a possible *Brady* violation. The State argues that the information is not discoverable under Rule of Criminal Procedure 16 (a)(2), which provides that reports, memoranda and other internal documents prepared in connection with the investigation or prosecution of the case.⁷ Furthermore, the State argues that the Defendant has not demonstrated good cause for obtaining the information. Defendant has not met the heightened standard governing

⁷ Super Ct. Crim. R. 16 (a)(2).

Rule 61 proceedings and has not demonstrated good cause for obtaining otherwise undiscoverable information.

10. Defendant requests all materials in relation to impeachment evidence of lay witnesses and their prior statements under *Brady*, *Giglio*, and *Rovario*. The State argues that they have provided all of the materials it possesses pertaining to impeachment evidence. Defendant has not shown good cause to obtain access to the State's file. Furthermore, the State cannot give information that it does not possess.
11. Defendant requests information of latent fingerprints found at Pacheco's residence, production of Defendant's cell phone, Cariely Rosado's phone number, and material relating to Cariely Rosado's probation. The State objects to providing the information stating that Defendant has not shown good cause for obtaining the information sought. The Court agrees that Defendant has not shown good cause for obtaining this information and that these requests are an attempt to go on a "fishing expedition" and investigation of the State's file.
12. Defendant requests the identity, notes, and reports of the unnamed Wilmington Police Officer who interpreted Defendant's and Pacheco's interviews. The State contends that it does not possess any of these materials. The Court cannot require the State to produce information it does not possess.
13. Finally, Defendant requests information relating to Defendant's police interrogation. Defendant requests that the State produce all information surrounding the interrogation from the time Defendant was transported to the Wilmington Police Department, including how long he waited and what food or drink he was offered. Defendant claims that his information is relevant to support an ineffective assistance of counsel claim that trial

counsel erroneously believed that prior inconsistent statements made during the interrogation would automatically be used against Defendant if Defendant testified. The State argues that information and reports surrounding an investigation by the State is not discoverable and that the Defendant is attempting to obtain the State's file as a "fishing expedition."

14. Defendant has not demonstrated good cause sufficient for the Court to compel the sought regarding Defendant's interrogation. Trial counsel has provided the Defendant with his file and trial counsel will have an opportunity to respond to ineffective assistance of counsel claims, including those claims surrounding prior inconsistent statements, after the Rule 61 motion has been filed.

NOW, THEREFORE, IT IS HEREBY ORDERED this June 4, 2014, Defendant Efrain Rivera's Motion to Compel the Production of Discovery and *Brady* Information is hereby DENIED.

(1) Defendant has ninety (90) days to file a Rule 61 Motion for Postconviction Relief and accompanying Brief.

(2) Trial counsel has thirty (30) days to file an Affidavit responsive to Defendant's claims of ineffective assistance of counsel contained in the Rule 61 Motion.

(3) After trial counsel's affidavit is filed, the State has sixty (60) days to file a Response to Defendant's Rule 61 Motion for Postconviction Relief.

(4) After the State files its response, Defendant has thirty (30) days to file a Reply.

Andrea L. Rocanelli

Honorable Andrea L. Rocanelli