

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
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 v.)
)
 KEITH TALLEY,) ID NO. 2001014954
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 Defendant.)
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Date Submitted: December 29, 2021
Date Decided: January 11, 2021

Upon the Defendant's Motion to Dismiss for Failure to Comply with Brady.
DENIED.

ORDER

Albert J. Roop, V, Esquire, John W. Downs, Esquire, Deputy Attorneys General,
Department of Justice, Wilmington, Delaware, Attorneys for the State of
Delaware.

Misty A. Seemans, Esquire, Wilmington, Delaware, Attorney for Defendant.

SCOTT, J.

Defendant Keith Talley (“Mr. Talley”) is charged with murder in the first degree and associated charges in connection with allegations arising from the death of Jaron Smullen on December 3, 2019. Trial is scheduled to begin on January 18, 2022, with jury selection scheduled to begin on or about January 13, 2022.

On December 7, 2021, the State of Delaware (“State”), in accordance with this Court’s protective order, provided redacted witness statements to defense counsel. According to Mr. Talley’s Motion to Dismiss, his counsel “learned for the first time that Witness 2 described the defendant in self-defense as the victim kept motioning like he may go get a gun; defendant tried to deescalate the situation; and that defendant did not state or want to start conflict. Specifically, Witness 2 stated “Town kept motioning like he was gonna get a gun or something” and “On that phone you can hear KJ talking about how he don’t want no smoke, man. Don’t want fight, don’t want to do nothing.” The victim, Jaron Smullen, was referred to as “J-Town” or “Town” and Mr. Talley was referred to as “KJ” in the witness statements. Upon review of the redacted witness statements, Mr. Talley filed this Motion to Dismiss (“Motion”) on the grounds the State suppressed Brady material. Mr. Talley argues the information relating to Witness 2’s statements were exculpatory because Brady includes self-defense evidence, no mention of Witness 2’s statements in police reports satisfied the evidence being exculpatory or impeachable and satisfied it was suppressed by the State. In addition, Mr. Talley argues the outcome of the

case will be prejudiced by the late disclosure as the identity of Witness 2 is still protected so defense counsel has not had the opportunity to speak with the witness.

The State opposes Mr. Talley's Motion. It is the State's position is Mr. Talley did not suffer prejudice because of the disclosure on December 7, 2021, nor did defense counsel prove prejudice justifying dismissal. Furthermore, the State asserts in communicating with defense counsel, defense counsel never asked for the identity of Witness 2 before filing this Motion. According to the State, defense counsel only request related to Witness 2 was for the State to produce Witness 2 for trial.

Upon consideration of Mr. Talley's Motion and the State's opposition thereto, the Court finds as follows:

1. It is well-settled law that a Brady violation occurs where there is “suppression by the prosecution of evidence favorable to an accused ... [that] 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.”¹
2. The Brady requirements promote the fair administration of justice and prevent the miscarriage of justice by requiring prosecutors to “turn over all favorable evidence to the accused” in order to “ensure a fair trial.”²

¹ *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

² *Wright v. State*, 91 A.3d 972, 987 (Del.2014).

3. The Delaware Supreme Court has identified the three components of a Brady violation as ““(1) evidence exists that is favorable to the accused, because it is either exculpatory or impeaching; (2) that evidence is suppressed by the State, willfully or inadvertently; and (3) its suppression prejudices the defendant.””³

4. Delayed disclosure of exculpatory evidence can result in a Brady violation if the evidence is not disclosed “within a sufficient amount of time for the defense to be able to use it.”⁴ It is not a Brady violation if, after delayed disclosure, the defendant can effectively present the evidence at trial and if the delay does not hinder the defendant's ability to investigate the evidence.⁵

5. It is the defendant's burden to show that the nondisclosure, or delayed disclosure, of favorable evidence prejudiced the defendant by denying the opportunity to use the evidence effectively.⁶

6. Mr. Talley argues that the State committed a Brady violation because the State suppressed exculpatory evidence contained witness statements and not mentioned in police reports. Specifically, Mr. Talley refers to a portion of

³ *Id.* at 988 (citing *Starling v. State*, 882 A.2d 747, 756 (Del.2005)).

⁴ *State v. Braden*, 2009 WL 10244069, at *2 (Del.Super. May 21, 2009).

⁵ *Id.*

⁶ *Wright*, 91 A.3d at 988.

Witness 2's statement which Witness 2 makes comments about self-defense due to the victim's actions. This Court is hesitant to recognize the statements of Witness 2 that "Town kept motioning like he was gonna get a gun or something" and "On that phone you can hear KJ talking about how he don't want no smoke, man. Don't want fight, don't want to do nothing" as to a statement implicating self-defense. Rather, this Court, through logical deduction, finds the statements may imply the victim had or may go get a gun. The State recognizes if the evidence which is delayed in disclosure is exculpatory, *Brady* is not violated where the evidence can be presented at trial and the defendant is not prevented by lack of time to make needed investigation.⁷ The Court does not find these alleged self-defense statements, taken at their face value, imply self-defense evidence. Therefore, the statements are not exculpatory. However, for the sake of argument, even though the Court did not find the statements give rise to self-defense evidence and are not exculpatory, the Court will assume the statements are exculpatory. Even with this assumption, the delayed disclosure would not, under these circumstances, give rise to a *Brady* claim.

⁷ *State v. DeShields*, 2008 WL 4868659, at *2 (Del. Super.) (citing *Syme v. United States*, 2006 WL 3091336, at *7 (D. Del. Oct. 31, 2006) (quoting *Higgs*, 713 F.2d at 43-44)).

7. The Court finds Mr. Talley has not suffered prejudice because of the delayed disclosure. Mr. Talley received the information sufficiently in advance of trial. Mr. Talley has not requested other relief, including a trial continuance or a motion to compel disclosure of Witness 2's identity, which could be considered.

8. For the aforementioned reasons, the State's delay in disclosing Brady material has not prejudiced Mr. Talley. Mr. Talley has had sufficient time to use the information effectively and had the ability to request other relief from this Court. Accordingly, dismissal of the case is inappropriate under these circumstances.

NOW, THEREFORE, IT IS HEREBY ORDERED, Defendant Keith Talley's Motion to Dismiss is hereby **DENIED**.

IT IS SO ORDERED.

/s/ Calvin L. Scott
Judge Calvin L. Scott, Jr.