

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
)
 v.)
)
 ROBERT FORENSKI,) ID NO. 2001018840
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 Defendant.)
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)

Date Submitted: June 3, 2022
Date Decided: August 23, 2022

Upon the Defendant's Motion to Identify Evidence Seized from Defendant.
DENIED.

ORDER

Colleen E. Durkin, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State of Delaware.

Joseph Hurley, Esquire, Wilmington, Delaware, Attorney for Defendant.

SCOTT, J

Defendant Robert Forenski (“Mr. Forenski”) is charged with five counts of Rape in the First Degree, one count of Sexual Abuse of a Child by a Person in a Position of Trust in the First Degree, one count of Continuous Sexual Abuse of a Child, and one count of Dangerous Crime against a Minor.

During the investigation, multiple digital devices were seized, and the State of Delaware (“State”) provided Mr. Forenski with an external hard drive on December 14, 2021, containing the digital downloads from the devices.

Mr. Forenski now requests the State to identify any digital material it seeks to offer into evidence and explicitly identify the evidence described by the victim that was not discovered during the digital search in this Motion to Identify Evidence Seized from Defendant (“Motion”). Mr. Forenski claims not identifying such evidence would amount to a Brady violation, or alternatively does not comply with methodology for a Bill of Particulars.

Upon consideration of Mr. Forenski'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

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. No such violation is present, nor would be present if the State does not identify the specific exhibits it intends to introduce as evidence at trial. The State has not suppressed any evidence, to the contrary, the State has provided Mr. Forenski with all electronically gathered information it collected from his devices and has represented to the Court that any nonelectronic evidence is available to Mr. Forenski.

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

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

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

5. The State is not required to review discovery and provide a summary for Mr. Forenski.⁴

6. As a courtesy, the State has agreed to provide information to defense counsel about where certain specific relevant items, relating to impeachment, are located in the electronically stored information.

7. Additionally, Mr. Forenski's argument relating a Bill of Particular is moot as the Bill of Particular relates to supplementing information contained in an indictment.⁵ It is not to be used as a discovery device to force the government to disclose its evidence or its legal theory.⁶

8. Accordingly, there is no Brady violation here nor is there an issue related to the Bill of Particulars.

NOW, THEREFORE, IT IS HEREBY ORDERED on this 23rd day of August 2022, Defendant Robert Forenski's Motion to Identify Evidence Seized from Defendant is hereby **DENIED**.

IT IS SO ORDERED.



Judge Calvin L. Scott, Jr.

⁴ *State v. Patterson*, 2022 WL 1310318, at *5 (Del. May 3, 2022).

⁵ *Lovett v. State*, Del.Supr., 516 A.2d 455, 467 (1986).

⁶ *State v. Banther*, 1998 WL 283476, at *1 (Del. Super. Ct. Apr. 2, 1998)