

U.S. Circuit Court of Appeals & State Brady Cases

FIRST CIRCUIT COURT OF APPEALS

Mastracchio v. Vose: *Brady* violation because knowledge of witness payments or favors made by the Witness Protection team is discoverable.

SECOND CIRCUIT COURT OF APPEALS

United States v. Matthews (2nd Cir. 1994): Rule 16 violation because the government attorney withheld a letter written by the defendant instead of disclosing it within a timely manner.

Leka v. Portuondo (2nd Cir. 2001): *Brady* violation because off-duty policeman's undisclosed observations would have contradicted testimony of other witnesses.

Disimone v. Phillips (2nd Cir. 2006): *Brady* violation because exculpatory statement would have allowed the defense to investigate another party's involvement.

THIRD CIRCUIT COURT OF APPEALS

United States v. Pelullo (3d Cir. 1997): *Brady* violation because an FBI agent's undisclosed notes and FBI surveillance tapes could have been used to impeach government witness whose credibility was central to case.

Virgin Islands v. Fahie (3d Cir. 2005): Prosecutorial "bad faith" is "probative to materiality" as well as relevant to determining a remedy.

FOURTH CIRCUIT COURT OF APPEALS

Spicer v. Roxbury (4th Cir. 1999): *Brady* violation because prosecutors did not disclose witness's prior inconsistent statement that he did not see the defendant.

Monroe v. Angelone (4th Cir. 2003): That while some *Brady* material which comes to light post-trial may not constitute a violation because of redundancy, this does not "excuse [pre-trial] discovery obligations." While "materiality" may exist as a prosecutorial defense in the post-trial setting, it is not a license to make "materiality" determinations pre-trial.

FIFTH CIRCUIT COURT OF APPEALS

Guerra v. Johnson (5th Cir. 1996): *Brady* violation for failure to disclose police intimidation of key witnesses and information regarding suspect seen carrying murder weapon minutes after shooting.

United States v. Sipe (5th Cir. 2004): *Brady* violation because the cumulative effect of undisclosed statement, criminal history of witness, and benefit to testifying aliens undermined credibility of a key witness.

United States v. Miller (5th Cir. 2008): *Brady* violation because undisclosed referral letter could have been used to impeach witness at trial.

LaCaze v. Warden La. Corr. Inst. For Women (5th Cir. 2011): *Brady* violation because prosecution withheld material concerning promise made to co-defendant.

SIXTH CIRCUIT COURT OF APPEALS

Schledwitz v. United States (6th Cir. 1999): *Brady* violation because Government witness portrayed as neutral and disinterested expert had actually been investigating defendant for years.

Joseph v. Coyle (6th Cir. 2006): *Brady* violation because witnesses' undisclosed testimony transcripts, notes on witness interviews, and immunity agreement would have impeached prosecution's crucial witness.

O'Hara v. Brigano (6th Cir. 2007): *Brady* violation because undisclosed written statement by victim could have been used to impeach victim's testimony.

SEVENTH CIRCUIT COURT OF APPEALS

United States v. Boyd (7th Cir. 1995): *Brady* violation for failure to disclose drug use and dealing by Government witness and "continuous stream of unlawful favors" including phone privileges, presents, and special visits.

Crivens v. Roth (7th Cir. 1999): *Brady* violation because failure to disclose crimes committed by Government witness is *Brady* even when witness used aliases.

EIGHTH CIRCUIT COURT OF APPEALS

The Eighth Circuit *White v. Helling* (8th Cir. 1999) found a *Brady* violation in a 27 year old murder case because the Government did not disclose that its chief eyewitness had originally identified someone else and identified the defendant only after several meetings with the police.

United States v. Barraza-Cazares (8th Cir. 2006): Held that a co-defendant's statement is exculpatory evidence because it is relevant to co-defendant's role in the offense.

NINTH CIRCUIT COURT OF APPEALS

United States v. Strifler (9th Cir. 1988): *Brady* violation when, after request by defendant, Government does not disclose information in probation file relevant to witness's credibility on ground that it was privileged.



Singh v. Prunty (9th Cir. 1998): *Brady* violation because of “favorable deal” given to a star witness and not disclosed.

United States v. Santiago (9th Cir. 1995): *Brady* violation because prosecutor had knowledge of and access to inmate files, including the defendant’s files held by Bureau of Prisons.

TENTH CIRCUIT OF APPEALS

Banks v. Reynolds (10th Cir. 1995): *Brady* violation because prosecutors did not disclose another individual or individuals had been arrested for the same charge.

Gonzales v. McKune (10th Cir. 2001): Forensic evidence relative to low sperm count in semen recovered from victim exculpatory because defendant did not have low sperm count.

ELEVENTH CIRCUIT COURT OF APPEALS

Jacobs v. Singletary (11th Cir. 1992): Witness statements to a polygraph examiner which were contrary to witness’ trial testimony is exculpatory because the conflicting statements were relevant to defendant’s claim of innocence.

D.C. CIRCUIT OF APPEALS

United States v. Brooks (D.C. Cir. 1992): *Brady* violation if a specific request is made by defendant and Government does not search records of police officer/witnesses.

United States v. Cuffie (D.C. Cir. 1996): *Brady* violation because undisclosed evidence of witness’s prior perjury could have impeached witness, even though the witness had been impeached by a cocaine addiction, cooperation with prosecution, incentives to lie, and violation of oath as police officer.

Selected State Cases

VIRGINIA SUPREME COURT CASES

Workman v. Commonwealth, 636 S.E.2d 368 (Va. 2006), in which it found that non-disclosed evidence is often “material” under *Brady* when the defendant could have used the evidence to discredit the entire police investigation.

Bly v. Commonwealth, 2010 WL 4347936 (Va. 2010), when the prosecution fails to disclose impeachment evidence about the key witness for the prosecution, the defendant will be entitled to a new trial.

TEXAS COURT OF CRIMINAL APPEALS CASES

Ex parte Mowbray (Tex. Crim. App. 1996): *Brady* violation because prosecutors failed to disclose exculpatory expert report.

Pena v. State (Tex. Crim. App. 2011): *Brady* violation because prosecution failed to disclose to defendant the audio portion of a videotape containing statements he made to the police.

NEW YORK CASES

PEOPLE V. BAXLEY 84 NY2d 208 – Failure of prosecutor to turn over prior statement of informant stating other informant witness was induced to falsely testify by promise of leniency. “A prosecutor's duty of disclosing exculpatory material extends to disclosure of evidence impeaching the credibility of a prosecution witness whose testimony may be determinative of guilt or innocence.

PEOPLE V. CWIKLA 46 NY2d 434 – Prosecutor’s failure confirm correspondence in support of informant’s application for parole. “A prosecutor is under a duty to disclose to defense counsel correspondence between the office of the District Attorney and the Parole Board advising of the co-operation of a principal prosecution witness in the trial of the witness' accomplices and expressing the hope that such co-operation will be taken into account when the witness is considered for parole.”

PEOPLE V. DOSHI 93 NY2d 499 - No Brady violation when prosecution did not turn over billing records defendant generated. “The Brady doctrine requires prosecutors to turn over material exculpatory to defendants. Brady does not, however, require prosecutors to supply a defendant with evidence when the defendant knew of, or should reasonably have known of, the evidence and its exculpatory nature.”

PEOPLE V. HUNTER 11 NY3d 1 - Prosecution failed to disclose complainant had accused another man of date rape before defendant’s trial in which he was accused of date rape. “If the information known to the People when this case was tried was ‘favorable to [the] accused’ and ‘material’ within the meaning of Brady, defendant had a due process right to obtain it, and that right could not be nullified by post-trial events.”

PEOPLE V. SANTORELLI, 95 N.Y.2d 412 – failure to turn over federal records not in possession of prosecutor not a Brady violation. “A prosecutor must ‘learn of any favorable evidence known to the others acting on the government's behalf in the case’ and promptly disclose any such material evidence to the defendant. Thus, this Court has charged the People with knowledge of exculpatory information in the possession of the local police, notwithstanding the trial prosecutor's own lack of knowledge.



PEOPLE V. STEADMAN 82 NY2d 1 – DA fails to disclose deal made by other prosecutor in the office for leniency to cooperating informant.) “The prosecutor's duty is not lessened because Brady material may affect only the credibility of a government witness. Moreover, the prosecutor's duty extends to correcting mistakes or falsehoods by a witness whose testimony on the subject is inaccurate

PEOPLE V. WRIGHT 86 NY2d 592 – Failure to inform defense that complainant was a police informant in assault case in which officers’ testimony differed pre-trial and at trial was a violation.