

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Argued - June 8, 2018

WILLIAM F. MASTRO, J.P.  
LEONARD B. AUSTIN  
ROBERT J. MILLER  
FRANCESCA E. CONNOLLY, JJ.

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2014-10360

DECISION & ORDER

The People, etc., respondent,  
v Jerome Wade, appellant.

(Ind. No. 2692/12)

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Paul Skip Laisure, New York, NY (Hannah Zhao of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, NY (John M. Castellano, Johnnette Traill, Joseph N. Ferdenzi, and Roni C. Piplani of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Stephen Knopf, J.), rendered October 17, 2014, convicting him of criminal possession of a weapon in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the People’s contention, the defendant adequately preserved for appellate review his contention that the People committed a *Brady* violation (*Brady v Maryland*, 373 US 83), and deprived him of his due process right to a fair trial by failing to turn over documents created in connection with investigations conducted by the Internal Affairs Bureau (hereinafter IAB) and federal civil lawsuits regarding two police officers who testified against the defendant at trial. The People have an obligation to disclose exculpatory evidence in their possession that is favorable to the defendant and material to his or her guilt or innocence (*see id.* at 87; *People v Fuentes*, 12 NY3d 259, 263; *People v Scott*, 88 NY2d 888, 890). “The prosecutor’s duty to exchange *Brady* material extends to the disclosure of evidence that can be used to impeach the credibility of a witness for the People whose testimony may be determinative of the defendant’s guilt” (*People v Wagstaffe*, 120 AD3d 1361, 1363; *see Giglio v United States*, 405 US 150, 154-155; *People v Baxley*, 84 NY2d 208,

213). In order to establish a *Brady* violation, a defendant must prove: (1) the evidence at issue is favorable to him or her, (2) the evidence was suppressed by the prosecution, either willfully or inadvertently, and (3) prejudice arose because the suppressed evidence was material (see *Strickler v Greene*, 527 US 263, 281-282; *People v Garrett*, 23 NY3d 878, 885; *People v Hayes*, 17 NY3d 46, 50).

Here, evidence of allegations of misconduct against the two officers who were primarily involved in the investigation and arrest of the defendant was favorable to the defendant for the purpose of impeaching their testimony (see *People v Garrett*, 23 NY3d at 886; *People v Rispers*, 146 AD3d 988, 989). However, the record establishes that the defendant's trial attorney had knowledge of most of the relevant documents related to the IAB investigations and federal civil lawsuits regarding the two officers prior to the defendant's trial (see *People v Francois*, 137 AD3d 935, 936; *People v Gordon*, 237 AD2d 376, 376; *People v Rodriguez*, 223 AD2d 605, 606; *People v Banks*, 130 AD2d 498, 499; cf. *People v Hubbard*, 132 AD3d 1013, 1014). "[E]vidence is not deemed to be *Brady* material when the defendant has knowledge of it" (*People v Francois*, 137 AD3d at 936, quoting *People v Rodriguez*, 223 AD2d at 606; see *United States v Agurs*, 427 US 97, 103; *People v Gordon*, 237 AD2d at 376). Additionally, there was no "reasonable possibility" that, had any purported official documents relating to the IAB investigations and the federal civil lawsuits been disclosed to the defendant, the result of the trial would have been different (*People v Bond*, 95 NY2d 840, 843; see generally *People v Hale*, 143 AD3d 910, 911; *People v Felix*, 56 AD3d 796, 798; *People v Thompson*, 54 AD3d 975, 976). The defendant's trial attorney had sufficient information regarding the allegations of misconduct against the two officers and had a meaningful opportunity to use that information to cross-examine the officers.

MASTRO, J.P., AUSTIN, MILLER and CONNOLLY, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court