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| <b>People v Cummings</b>                                                                                                                                                                                                       |
| 2017 NY Slip Op 33113(U)                                                                                                                                                                                                       |
| December 13, 2017                                                                                                                                                                                                              |
| County Court, Dutchess County                                                                                                                                                                                                  |
| Docket Number: 181/2017                                                                                                                                                                                                        |
| Judge: Edward T. McLoughlin                                                                                                                                                                                                    |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

2017/2928

DUTCHESS COUNTY  
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COUNTY OF DUTCHESS

2017 DEC 20 PM 3:04

THE PEOPLE OF THE STATE OF NEW YORK

-against-

**BRADY/BALDI  
ORDER**

MICHAEL CUMMINGS,

Indictment No. 181/2017

Defendant.

HON. EDWARD T. McLOUGHLIN

The above named defendant having appeared personally and by counsel and having been arraigned under the within indictment and counsel for the defendant having made a written demand pursuant to Criminal Procedure Law section 240.10[1]) and 240.20 or the prosecution having waived such demand, it is hereby

ORDERED that the District Attorney and the Assistant responsible for the case or if the matter is not being prosecuted by the District Attorney, the prosecuting agency and its assigned representatives, are required to make timely disclosure of information favorable to the defense as required by *Brady v Maryland*, 373 US 83 [1963], *Giglio v United States*, 405 US 150 [1972], *People v Geaslen*, 54 NY2d 510 [1981] and their progeny under the United States and New York State constitutions and by Rule 3.8(b) of the New York State Rules of Professional Conduct; and it is further

ORDERED, that the District Attorney and the Assistant responsible for the case or if the matter is not being prosecuted by the District Attorney, the prosecuting agency and its assigned representatives, have a duty to learn of such favorable information that is known to others acting on the government's behalf in the case, including the police,

and are therefore expected to confer with investigative and prosecutorial personnel who acted in the case and to review all files which are directly related to the prosecution or investigation of this case. For purposes of this Order, favorable information can include but is not limited to:

- a) Information that impeaches the credibility of a testifying prosecution witness, including (i) benefits, promises, or inducements, express or tacit, made to a witness by a law enforcement official or law enforcement victim services agency in connection with giving testimony or cooperating in the case; (ii) a witness's prior inconsistent statements, written or oral; (iii) a witness's prior convictions and uncharged criminal conduct; (iv) information that tends to show that a witness has a motive to lie to inculcate the defendant, or a bias against the defendant or in favor of the complainant or the prosecution; and (v) information that tends to show impairment of a witness's ability to perceive, recall, or recount relevant events, including impairment resulting from mental or physical illness or substance abuse;
- b) Information that tends to exculpate, reduce the degree of an offense, or support a potential defense to a charged offense;
- c) Information that tends to mitigate the degree of the defendant's culpability as to a charged offense. or to mitigate punishment;
- d) Information that tends to undermine evidence of the defendant's identity as a perpetrator of a charged crime, such as a non-identification of the defendant by a witness to a charged crime or an identification or other evidence implicating another person in a manner that tends to cast doubt on the

defendant's guilt; and

e) Information that could affect in the defendant's favor the ultimate decision on a suppression motion; and it is further

ORDERED, that the District Attorney and the Assistant or any other agent prosecuting the case is hereby advised of his/her duty to disclose favorable information whether or not such information is recorded in tangible form and irrespective of whether the prosecutor credits the information; and it is further

ORDERED, that the District Attorney and the Assistant or any other agent responsible for the prosecution of the case is directed that favorable information must be timely disclosed in accordance with the United States and New York State constitutional standards, as well as CPL article 240. Disclosures are presumptively "timely" if they are completed no later than 30 days before commencement of trial in a felony case and 15 days before commencement of trial in a misdemeanor case. Records of a judgment of conviction or a pending criminal action ordinarily are discoverable within the time frame provided in CPL sections 240.44 or 240.45[1]. Disclosures that pertain to a suppression hearing are presumptively "timely" if they are made no later than 15 days before the scheduled hearing date; and it is further

ORDERED, that the District Attorney and the Assistant or any other agent responsible for the prosecution of the case is hereby reminded and informed that his/her obligation to disclose is a continuing one; and it is further

ORDERED, notwithstanding the foregoing, that a prosecutor may apply for a protective order, which may be issued for good cause, and CPL section 240.50 shall be deemed to apply, with respect to disclosures required under this order. Moreover, the

prosecutor may request a ruling from the court on the need for disclosure. Only willful and deliberate conduct will constitute a violation of this order or be eligible to result in personal sanctions against a prosecutor; and it is further

ORDERED, that counsel for defendant is required to:

- a) confer with the defendant about his/her case and is required to keep the defendant informed about all significant developments in the case; and
- b) to timely communicate any and all plea offers to the defendant and to provide him/her with reasonable advice about the advantages and disadvantages of any such plea offer including as to the potential sentencing ranges that apply in the case;
- c) where applicable, to insure the defendant receives competent advice concerning immigration consequences as required under *Padilla v Kentucky*, 559 US 356 [2010];
- d) perform a reasonable investigation of the facts and the law pertinent to the case (including, as applicable, visiting the scene, interviewing witnesses, subpoenaing pertinent materials, consulting experts; inspecting exhibits, reviewing all discovery materials obtained from the prosecution, researching legal issues, etc.) or, as appropriate, making a reasonable professional judgment not to investigate a particular matter;
- e) comply with the requirements of the New York State Rules of Professional Conduct regarding conflicts of interest, and when appropriate, timely notify the court of a possible conflict so that an inquiry may be undertaken or a ruling made;
- f) possess or acquire a reasonable knowledge and familiarity with criminal

procedural and evidentiary law to ensure constitutionally effective representation in the case; and

g) in accordance with statute, provide notices as specified in CPL sections 250.10, 250.20 and 250.30. (e.g., a demand, intent to introduce the evidence, etc.),

Dated: Poughkeepsie, New York  
December 15, 2017



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Honorable Edward T. McLoughlin  
Dutchess County Court

cc: District Attorney  
Counsel for Defendant  
Defendant  
Clerk of the Court