



to defendant, this information was material to the credibility of Mrs. Noble as the victim and complaining witness by casting doubt on her self-interest and bias in testifying against the defendant in federal court.

It is well settled that due process forbids the government from suppressing material evidence from an accused. See, e.g., Brady v. Maryland, 373 U.S. 83, 87 (1963). In order to establish a due process violation under Brady, "a defendant must show that: (1) evidence was suppressed; (2) the suppressed evidence was favorable to the defense; and (3) the suppressed evidence was material either to guilt or to punishment." See, e.g., United States v. Pelullo, 399 F.3d 197, 209 (3d Cir. 2005) (citation omitted).

Our Court of Appeals has held that the prosecution's failure to conduct a criminal background search on a witness meets the first element of a Brady complaint. See United States v. Perdomo, 929 F.2d 967, 970 (3d Cir. 1991). Furthermore, the government here concedes that the evidence in question was favorable to defendant, thereby satisfying the second Brady element. The government contends, however, that defendant cannot satisfy the third Brady element, namely that the outstanding criminal charges against Mrs. Noble in Montgomery County were material to the jury's guilty verdict on the kidnaping charge.

While no one definition for "materiality" exists, implicit is the "concern that the suppressed evidence might have affected the outcome of the trial." United States v. Agurs, 427

U.S. 97, 104 (1976). In United States v. Bagley, the Supreme Court explained: "Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." 473 U.S. 673, 682 (1985). See also Kyles v. Whitley, 514 U.S. 419, 435 (1995); United States v. Veksler, 62 F.3d 544, 550 (3d Cir. 1995).

Defendant has not met his burden under Brady and its progeny. Simply put, we see no "reasonable probability" that had defendant known of Mrs. Noble's outstanding criminal charges prior to trial he would have been acquitted of the kidnaping charge. The kidnaping statute, 18 U.S.C. § 1201, required proof that defendant knowingly and wilfully seized or abducted the victim, thereafter transported her across state lines, and held her for some reason. Of course, whether Mrs. Noble was involved in a drug transaction in November 2005, as she stood accused in Montgomery County, has no bearing on defendant's guilt under 18 U.S.C. § 1201 for kidnaping Mrs. Noble in November, 2003. Moreover, Mrs. Noble admitted at trial to having used controlled substances in the past. These recent charges, which were simply accusations and not proof of guilt, would have had little, if any, effect on her credibility and character even assuming such evidence was admissible.

Accordingly, we will deny the motion for a new trial.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA                   :                   CRIMINAL ACTION  
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  :                   :  
  :                   :  
  :                   :  
JOSEPH NOBLE                                 :                   NO. 05-0369

ORDER

AND NOW, this                   day of August, 2006, for the reasons  
set forth in the accompanying Memorandum, it is hereby ORDERED  
that the motion of defendant for a new trial is DENIED.

BY THE COURT:

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C.J.