

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

WILLIAM HARRIS :  
 : CIVIL ACTION  
 v. :  
 : 97-3666  
 CITY OF PHILADELPHIA, :  
 et al. :

MEMORANDUM

Broderick, J.

August 14, 1998

Presently before the Court is a motion for summary judgment filed by Defendant Lynne Abraham, in her official capacity as Philadelphia District Attorney. For the reasons which follow, the Court will grant the motion.

Plaintiff William Harris brought this action under 42 U.S.C. § 1983 and state law. Plaintiff alleges that his constitutional rights were violated as a result of two illegal arrests, and the resulting prosecutions. Plaintiff's claim against Defendant Lynne Abraham, in her official capacity as Philadelphia District Attorney, is based on his allegations that the District Attorney's Office failed to meet its obligation to gather and produce exculpatory information, as required by Brady v. Maryland, 373 U.S. 83 (1963), and failed to train its personnel to meet such obligations.

The undisputed facts, as disclosed by the admissible exhibits, depositions and affidavits submitted in connection with

this motion for summary judgment, are summarized as follows:

On or about January 6, 1988 Plaintiff was arrested by 39th District Police Officers John Baird, Steven Brown, Howard Seddon, James Ryan and Thomas DeGovanni. According to Plaintiff's deposition testimony, Plaintiff was unlawfully arrested and was falsely charged with possession of a controlled substance with intent to deliver and delivery of a controlled substance. More than one of the defendant police officers have admitted that, on or about January 6, 1988, the officers entered Plaintiff's home without a search warrant, and then obtained a search warrant after they had searched Plaintiff's home and arrested Plaintiff.

According to Plaintiff's deposition testimony, Plaintiff was afraid of the police officers who arrested him, and did not think he had a chance to prevail at trial. Accordingly, on October 31, 1989, Plaintiff pleaded guilty to the narcotics charges which arose from the January 1988 arrest.

On or about April 13, 1990, Plaintiff was again arrested by Officers Baird and Ryan of 39th District, and was charged with possession with intent to deliver a controlled substance. According to Plaintiff's deposition testimony, this arrest was also unlawful and the charges against him were false. Following his arrest, Plaintiff remained in prison for approximately six weeks. Plaintiff eventually posted bail and was released. Upon

his release, Plaintiff went into hiding and failed to appear in court. According to Plaintiff's deposition, Plaintiff went into hiding because he was afraid of the 39th District officers who had arrested him. A warrant was issued for Plaintiff's arrest.

On or about August 5, 1991, Plaintiff was again arrested-- this time, by police officers outside the 39th District. According to Plaintiff's deposition testimony, Plaintiff was arrested on the outstanding warrant. However, evidence produced by Defendant (including the court records of Plaintiff's criminal case) reveals that Plaintiff was again charged with possession of a controlled substance, possession with intent to deliver and criminal conspiracy. Plaintiff remained in prison following his August 1991 arrest. He pleaded guilty to the charges arising from the April 1990 arrest as well as the August 1991 arrest. The charges against Plaintiff were consolidated and, on March 3, 1992, Plaintiff was sentenced to two concurrent terms of three to six years imprisonment. Plaintiff was assigned to a half-way house in February 1994. In August 1994, Plaintiff was paroled.

In early 1995, former 39th District police officers Baird, Brown, Ryan and DeGovanni were indicted for criminal activities which they undertook as police officers in the 39th District. In July 1995, the District Attorney's Office nolle prossed the charges and convictions against Plaintiff which arose from his arrests in 1988 and 1990 by officers in the 39th District.

Following the nolle prosequere of said charges, Plaintiff's criminal defense counsel moved to have Plaintiff resentenced for the offenses which arose from the August 1991 arrest. On October 19, 1995, Plaintiff was resentenced on the charges which arose from the August 1991 arrest. The sentencing court vacated Plaintiff's sentence of March 3, 1992 and sentenced Plaintiff to two concurrent terms of one to two years imprisonment on the charges arising from the 1991 arrest. The sentencing court credited Plaintiff with time served. In light of the fact that Plaintiff had served over three years imprisonment (considering credit for time served), Plaintiff was released without parole.

According to the undisputed evidence submitted by Plaintiff and Defendant (including the deposition testimony of Lynne Abraham, the deposition testimony of several Assistant District Attorneys, and the affidavit of Arnold Gordon, the First Assistant District Attorney) the Philadelphia District Attorney's Office provides training to all Assistant District Attorneys with respect to a prosecutor's obligations to disclose exculpatory materials under Brady v. Maryland and its progeny. According to the deposition testimony of the District Attorney and the Assistant District Attorneys submitted by Plaintiff in the instant case, the Assistant District Attorneys were and are aware of their obligations under Brady, and are kept apprised of any

new case law which may affect their obligations under Brady.

According to the undisputed evidence contained in the affidavit of Arnold Gordon, First Assistant District Attorney, as well as the deposition testimony of the District Attorney and Assistant District Attorneys, Assistant District Attorneys participate in a training and orientation program when they first begin working at the District Attorney's Office. The program has traditionally been at least three weeks in length, and is designed to teach new Assistant District Attorneys about the policies of the District Attorney's Office and about their responsibilities as prosecutors, including their obligation to produce Brady material. Assistant District Attorneys also receive training on how to determine whether probable cause exists by examining the face of the warrant and its accompanying affidavits. Once Assistant District Attorneys have completed their orientation and begin their service, they receive on-the-job training from colleagues and supervisors. In addition, Assistant District Attorneys must comply with continuing legal education requirements established by the Supreme Court of Pennsylvania.

According to the deposition testimony of Elois Howard (which Plaintiff submitted in connection with the instant motion for summary judgment), Ms. Howard worked from 1986 until 1991 in the

Philadelphia District Attorney's Office as Chief of the Felony Waiver Unit. According to Ms. Howard's deposition testimony, she was at some point during her employment contacted by another Assistant District Attorney who informed her that, during the course of a hearing on a motion to suppress, a public defender had sought to ask a police officer from the 39th District about prior documents that he had prepared in other cases. The defender sought to challenge probable cause in connection with his motion to suppress by showing that the officer had recited a similar fact pattern in other affidavits for probable cause submitted in other cases. According to Ms. Howard's deposition testimony, the judge who presided over the motion to suppress ordered that the public defender turn the documents over to the District Attorney's office for review. According to her undisputed deposition testimony, Ms. Howard reviewed the documents provided by the defender, and concluded that the documents did not create any inference that the officer was lying as to probable cause in any of the cases. Ms. Howard reported her conclusion to her supervisor. She or her supervisor relayed this information to the District Attorney's Special Investigations Unit. In his deposition testimony, Drew Barth, the Chief of the Special Investigations Unit for the Philadelphia District Attorney's Office from 1988 until 1990, stated that he has a vague recollection of being informed by Elois Howard of

some type of a problem with a police officer but does not recall anything else about the incident.

Rule 56 of the Federal Rules of Civil Procedure provides that a court shall grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c).

The law is clear that when a motion for summary judgment under Fed.R.Civ.P. 56 is properly made, the non-moving party cannot rest on the mere allegations of the pleadings. Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). Rather, in order to defeat the motion for summary judgment, the non-moving party, by its own affidavits, or by depositions, answers to interrogatories or admissions on file, "must set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e).

The Court must draw any inferences from the underlying facts in favor of the non-moving party, and must deny summary judgment if there is a disagreement over what inferences can be reasonably drawn from the facts even if those facts are undisputed. Ideal Dairy Farms v. John Labatt, 90 F.3d 737, 744 (3d Cir. 1996).

However, the Supreme Court has made clear that "[t]he mere existence of a scintilla of evidence" in support of the non-movant's position will not be sufficient to defeat a motion for summary judgment. Anderson, 477 U.S. at 252.

In Brady v. Maryland, 373 U.S. 83, 87 (1963), the Supreme Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to either guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." In subsequent cases, the Supreme Court recognized that, regardless of whether the defendant made a request, due process is violated when the prosecution suppresses exculpatory or impeachment evidence, and "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." United States v. Bagley, 473 U.S. 667, 685 (1985).

In light of the fact that Plaintiff pleaded guilty to the charges against him, and did not proceed to trial on said charges, it is not at all clear that Plaintiff had a constitutional right to receive Brady material. The Third Circuit has never held that an individual who has entered a plea of guilty has the right to later assert a claim for a Brady

violation. As the Third Circuit has noted, “[t]he rule of Brady v. Maryland is founded on the constitutional requirement of a fair trial... It is not a rule of discovery.” United States v. Kaplan, 554 F.2d 577, 579 (3d Cir. 1977). At least one Federal District Court in Pennsylvania has held that a defendant does not have a right to obtain Brady material for use in a pretrial decision to plead guilty. See, United States v. Wolczik, 480 F.Supp. 1205, 1210 (W.D. Pa. 1979).

The Court recognizes, however, that several courts in other Circuits have held that an individual may seek to withdraw a guilty plea on the ground that the plea was not voluntary and intelligent because it was made in the absence of withheld Brady material. See, e.g., Sanchez v. United States, 50 F.3d 1448 (9th Cir. 1995); White v. United States, 858 F.2d 416, 422 (8th Cir. 1988); Miller v. Angliker, 848 F.2d 1312, 1319-20 (2d Cir. 1988).

Obviously, a claim of a Brady violation typically arises in the context of a motion for acquittal or a new trial, not a claim for money damages under § 1983. Although the Third Circuit has never expressly approved a § 1983 claim for money damages based on a Brady violation, other courts which have considered the question have determined that a plaintiff may seek money damages under § 1983 for a violation of Brady. See, e.g., McMillan v. W.E. Johnson, 88 F.3d 1554, 1567 (11th Cir. 1996); Carter v. Burch, 34 F.3d 257, 263-64 (4th Cir. 1994).

Even in those cases in which a plaintiff does claim a Brady violation under § 1983, the plaintiff rarely seeks relief against an individual prosecutor. It is well-settled that negligence will not satisfy a claim under § 1983. Daniels v. Williams, 474 U.S. 327 (1986). Accordingly, unlike a claimant seeking a new trial on the grounds of a Brady violation (where the good faith of a prosecutor is not a defense), a claimant seeking damages under § 1983 must allege that the prosecutor intentionally withheld exculpatory Brady materials. Moreover, a prosecutor enjoys absolute immunity from suit with respect to all actions performed in a "quasi-judicial" role. Imbler v. Pachtman, 424 U.S. 409, 430 (1976). Absolute immunity extends to all activities which a prosecutor takes in court, and other out-of-court actions which are "intimately associated with the judicial phases" of litigation. Id.

In the instant case, Plaintiff has not named any individual prosecutors as defendants. Instead, Plaintiff has named as a Defendant Lynne Abraham, in her official capacity as Philadelphia County District Attorney. Plaintiff seeks to hold the Philadelphia County District Attorney's Office liable as a municipal entity under § 1983. Plaintiff never sought an acquittal or sought to withdraw his guilty pleas based on a Brady violation. Accordingly, Plaintiff raises this Brady challenge for the first time in the context of the instant § 1983

action.

A municipality is liable under § 1983 if the municipality itself, through the implementation of a municipal policy or custom, causes a constitutional violation. Monell v. New York City Dep't of Social Services, 436 U.S. 658, 691-95 (1978). In order to prove municipal liability, a plaintiff must establish "that, through its deliberate conduct, the municipality was the 'moving force' behind the [constitutional] injury alleged." Board of County Commissioners of Bryan County v. Brown, 520 U.S. 397, --, 117 S.Ct. 1382, 1388 (1997). Municipal liability may not be premised on respondeat superior. Monell, 436 at 693-94.

As the Third Circuit has explained, a municipal policy is made when a decisionmaker with final authority to establish municipal policy issues an official proclamation, policy or edict. Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996). A municipal custom may be established by evidence that a practice, though not authorized by law, is so permanent and well-settled as to virtually constitute law. Id. A custom may also be established by evidence of knowledge and acquiescence of the practice. Id. In other words, in order to establish a municipal custom, a plaintiff must establish "that policymakers were aware of similar unlawful conduct in the past, but failed to take precautions against future violations, and that this failure, at

least in part, led to... [plaintiff's] injury." Id. at 972.

The Supreme Court has recognized that a municipality may be held liable for a failure to train its employees if "the failure to train amounts to deliberate indifference to the rights of persons" with whom the employees come in contact, and thus constitutes a violative policy or custom. City of Canton v. Harris, 489 U.S. 378 (1989). As the Supreme Court has stated, "[o]nly where a failure to train reflects a 'deliberate' or 'conscious' choice by a municipality-- a 'policy' as defined by our prior cases-- can a city [or municipal entity] be liable for such a failure under § 1983." Id. at 390 (citations omitted). It is not enough to show "[a]dequately trained officers occasionally make mistakes; the fact that they do says little about the training program or the legal basis for holding the city liable." City of Canton, 489 U.S. at 391. Furthermore, it is not enough to show "that an injury or accident could have been avoided if an officer had had better or more training, sufficient to equip him to avoid the particular injury-causing conduct." Id. at 390-391.

Rather, a showing of a municipality's "continued adherence to an approach that they know or should know has failed to prevent tortious conduct by employees may establish the conscious disregard for the consequences of their action-- the 'deliberate indifference'-- necessary to trigger liability." Board of County

Commissioners v. Brown, 520 U.S. at --, 117 S.Ct. at 1390. A plaintiff may establish municipal liability by showing "the existence of a pattern of tortious conduct by inadequately trained employees [which] may tend to show that the lack of proper training, rather than a one-time negligent administration of the program or factors peculiar to the officer involved in a particular incident is the 'moving force' behind the plaintiff's injury." Id.

As the Third Circuit has noted:

Establishing municipal liability on a failure to train claim under § 1983 is difficult. A plaintiff must identify a failure to provide specific training that has a causal nexus with their injuries and must demonstrate that the absence of that specific training can reasonably be said to reflect a deliberate indifference to whether the alleged constitutional deprivations occurred.  
Reitz v. County of Bucks, 125 F.3d 139, 145 (3d Cir. 1997).

In his complaint filed in the instant case, Plaintiff alleges that Lynne Abraham, in her official capacity as Philadelphia District Attorney, is liable under § 1983 for a violation of Plaintiff's rights under Brady. Plaintiff alleges that the District Attorney did not properly train Assistant District Attorneys to determine when police officers were fabricating probable cause. Plaintiff further alleges that the Philadelphia District Attorney's Office did not have proper mechanisms and/or systems in place to promptly discover police

misconduct and provide information of said misconduct to criminal defendants. Plaintiff contends that, had such training and mechanisms been in place, the District Attorney's Office could have sooner discovered that certain police officers in the 39th District were committing perjury and fabricating probable cause. Additionally, Plaintiff contends that Lynne Abraham, in her official capacity as the Philadelphia District Attorney, knew that certain officers in the 39th District (including those who arrested Plaintiff) were committing perjury and other wrongful acts, and knew that Plaintiff's convictions were the result of such wrongful acts. Plaintiff alleges that the District Attorney failed to disclose such information to criminal defendants, including Plaintiff, as required under Brady.

The Court has examined all of the depositions, affidavits and other admissible exhibits submitted by Plaintiff, as well as by Defendant, and has resolved all inferences in favor of the Plaintiff.

#### No Municipal Policy or Custom

Drawing all inferences in favor of the Plaintiff, no reasonable fact-finder could find that Defendant Lynne Abraham, in her official capacity as Philadelphia District Attorney, had a municipal policy or custom to not turn over Brady material. Plaintiff has produced no evidence which tends to show the

existence of such a policy or custom.

Plaintiff has not produced any evidence to support his allegations that Lynne Abraham, in her official capacity as Philadelphia District Attorney, knew at the time Plaintiff pleaded guilty in 1989 and 1991, or even at the time Plaintiff was sentenced in 1992, that police officers in the 39th District were committing perjury and falsifying affidavits of probable cause, or knew that Plaintiff's convictions were the result of illegal conduct and perjury. As explained above, the Plaintiff can not rest on the mere allegations of his complaint. He must come forward with admissible evidence (by his own affidavits, or by depositions, answers to interrogatories or admissions on file) which sets forth specific facts showing a genuine issue for trial. Plaintiff has failed to come forward with any evidence which would support his allegation that the Philadelphia District Attorney knew at the time Plaintiff pleaded guilty (in 1988 or 1991) or was sentenced (in 1992) that police officers in the 39th District were committing perjury or that Plaintiff's convictions were the result of perjury or illegal conduct.

There is voluminous undisputed evidence in the record (evidence produced both by Plaintiff and by Defendant) which establishes that the District Attorney's Office did have a policy of turning over exculpatory Brady materials. This undisputed evidence establishes that the Assistant District Attorneys who

worked in the Philadelphia District Attorney's Office understood their obligations under Brady and sought to fulfill those obligations.

No Failure to Train

Furthermore, drawing all inferences in favor of the Plaintiff, no reasonable fact-finder could find that Defendant Lynne Abraham, in her official capacity as Philadelphia District Attorney, exercised deliberate indifference in failing to train Assistant District Attorneys to turn over Brady materials. Plaintiff has produced no evidence which could tend to show that the District Attorney, as the policy maker for the District Attorney's Office, continued to adhere to an approach that she knew or should have known had caused Assistant District Attorneys to not fulfill their obligations under Brady. Moreover, Plaintiff has produced no evidence which could tend to show a pattern of inadequately trained Assistant District Attorneys failing to fulfill their obligations under Brady.

In connection with the instant motion for summary judgment, Plaintiff has submitted two "Affidavits"-- one by Jack McMahon, Esquire (who, according to his affidavit, was at one time employed in the Philadelphia District Attorney's Office) and one by Bradley S. Bridge (who, according to his affidavit, is an attorney with the Defender Association of Philadelphia). It is

not clear whether Plaintiff intended to submit these notarized affidavits as expert testimony or testimony of a factual witness. Neither affidavit sets forth any admissible evidence that the Philadelphia District Attorney's Office had a custom or policy to not turn over Brady materials. Moreover, neither affidavit contains any evidence that the Philadelphia District Attorney's Office failed to train Assistant District Attorneys in connection with their obligations to turn over Brady materials in a manner which amounted to deliberate indifference to the constitutional rights of the persons with whom Assistant District Attorneys came in contact.

In Mr. McMahon's affidavit, Mr. McMahon avers that he examined several of the depositions submitted in this case. On the basis of his examination of said depositions, Mr. McMahon sets forth his conclusion that the District Attorney's Office did not undertake adequate training "on the concept of fabricated probable cause on search warrants." Mr. McMahon further avers that the District Attorney's Office should have had a system in place to track individual police officer's individual cases "so that if a question arises regarding common fact patterns, the history and practices of the officer can be checked quite easily." Moreover, Mr. McMahon avers that the District Attorney's office should have had a data base of all complaints and reports as to each individual officer.

Mr. McMahon further sets forth in his affidavit the conclusory statement that the Philadelphia District Attorney's Office "knew of the illegal conduct of Officer Baird and Officer Ryan as early as 1991 and were aware that federal charges against these officers were appropriate in 1992." Although it is not clear whether Mr. McMahon's affidavit was submitted as testimony of an expert witness or a fact witness, it is clear that the above-quoted statement regarding what the District Attorney's Office knew would be inadmissible at trial. McMahon has failed to set forth any factual basis to support his conclusory statement regarding what the District Attorney's Office knew in 1991 or 1992. As noted above, Plaintiff has presented no admissible evidence (by his own affidavits, or by depositions, answers to interrogatories or admissions on file) that the District Attorney herself, or any Assistant District Attorneys, had knowledge that officers in the 39th District were committing perjury or were falsifying probable cause affidavits at the time Plaintiff pleaded guilty in 1989 and 1991 or the time Plaintiff was sentenced in 1992.

In Bradley S. Bridge's Affidavit, Mr. Bridge states criticisms similar to those of Mr. McMahon. Mr. Bridge criticizes the District Attorney's failure to train Assistant District Attorneys with respect to spotting perjury in probable cause affidavits, and the District Attorney's failure to maintain

a data base as to reports and complaints filed against individual police officers. Mr. Bridge further criticizes the District Attorney's failure to "share learned information" among the District Attorney's Office, the Police Department, the FBI and the U.S. Attorney's Office.

The affidavits of Mr. McMahon and Mr. Bridge do not contain admissible evidence which support Plaintiff's allegation that the Philadelphia District Attorney exercised deliberate indifference in failing to train Assistant District Attorneys in connection with their obligations under Brady. At most, these criticisms amount to a claim that the District Attorney's Office could have done more to ferret out false statements and perjury in connection with probable cause affidavits.

It is not enough to suggest affirmative steps which the District Attorney's Office could have taken to ferret out false affidavits of probable cause, in hindsight of the 39th District police corruption scandal. The Plaintiff must come forward with admissible evidence that the policy makers in the District Attorney's Office were aware of the likelihood of perjured testimony by police officers, were aware that Assistant District Attorneys would lack specific tools to recognize such false testimony, and nevertheless deliberately chose not to equip its Assistant District Attorneys with these specific tools. The District Attorney's failure to undertake the steps suggested by

Mr. McMahon or Mr. Bridge in ferreting out false statements in probable cause affidavits does not amount to a failure to train which demonstrates a deliberate indifference on the part of the District Attorney's Office to the constitutional rights of the persons with whom Assistant District Attorneys come into contact.

Plaintiff's Constitutional Rights under Brady Were Not Violated.

Moreover, drawing all inferences in favor of the Plaintiff, no reasonable fact-finder could find that Plaintiff's constitutional rights under Brady were violated. As noted above, there is significant question whether an individual who is pleading guilty has a right to Brady materials. Moreover, the Third Circuit has held that "where a prosecutor has no actual knowledge or cause to know of the existence of Brady material in a file unrelated to the case under prosecution, a defendant, in order to trigger an examination of such unrelated files, must make a specific request for that information-- specific in the sense that it explicitly identifies the desired material and is objectively limited in scope." United States v. Joseph, 996 F.2d 36, 41 (3d Cir.), cert. denied, 510 U.S. 937 (1993).

Plaintiff in the instant case has produced no admissible evidence that, the District Attorney herself, or any Assistant District Attorneys, knew or had reason to know that Brady

materials existed in files unrelated to Plaintiff's case. Moreover, Plaintiff has produced no evidence that he made a specific request for such information. Indeed, as the Court noted above, Plaintiff raised the issue of a Brady violation for the first time in the instant § 1983 action. Accordingly, Plaintiff can not establish that he suffered a violation under Brady.

Finally, as the District Attorney notes in its memorandum in support of summary judgment, the Plaintiff testified in his deposition testimony that he knew, at the time he pleaded guilty, that officers in the 39th District were corrupt. Accordingly, Plaintiff can not claim that there was a "reasonable probability" that, had he known that the officers were corrupt, Plaintiff would have pleaded not guilty and proceeded to trial.

Although Courts in other Circuits have recognized that an individual who has pleaded guilty may establish a violation of due process on the basis of failure to receive Brady materials, those Courts have required that, in order to show that the withheld evidence was material (as required under Brady), the claimant must show that there was a "reasonable probability" that the discovery of the withheld evidence would have led the claimant to change his plea and go to trial. See, e.g., Sanchez, 50 F.3d at 1454; Miller, 848 F.2d at 1322.

In the instant case, Plaintiff entered one guilty plea in

October 1989, and entered another guilty plea after he was arrested in August 1991. Plaintiff has failed to come forward with any admissible evidence (by his own affidavits, or by depositions, answers to interrogatories or admissions on file) that, at the time he entered his guilty pleas, the District Attorney's Office possessed information that officers in the 39th District were engaging in corrupt activities. Furthermore, Plaintiff has stated in his deposition testimony that he knew that the 39th District police officers were engaging in corrupt activities. Accordingly, Plaintiff can not show that a "reasonable probability" existed that the discovery of information relating to the officers' corruption would have led Plaintiff to change his plea and go to trial.

Accordingly, the Court will grant summary judgment in favor of Defendant Lynne Abraham, in her official capacity as Philadelphia District Attorney, and against Plaintiff William Harris. As explained above, drawing all inferences in favor of the Plaintiff, no reasonable fact-finder could find that Defendant Lynne Abraham, in her official capacity as Philadelphia District Attorney, had a municipal policy or custom to not turn over Brady material. Furthermore, drawing all inferences in favor of the Plaintiff, no reasonable fact-finder could find that Defendant Lynne Abraham, in her official capacity as Philadelphia

District Attorney, exercised deliberate indifference in failing to train Assistant District Attorneys to turn over Brady materials. Furthermore, drawing all inferences in favor of the Plaintiff, no reasonable fact-finder could find that Plaintiff William Harris suffered a violation of his constitutional rights under Brady. Accordingly, Lynne Abraham, in her official capacity as Philadelphia District Attorney, is entitled to judgment as a matter of law, and the Court shall grant summary judgment in favor of Lynne Abraham, in her official capacity as Philadelphia District Attorney, and against Plaintiff William Harris.

An appropriate Order follows.

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

WILLIAM HARRIS :  
 : CIVIL ACTION  
 v. :  
 : 97-3666  
 CITY OF PHILADELPHIA, :  
 et al. :

O R D E R

AND NOW, this 14th day of August, 1998; upon consideration of the motion for summary judgment filed by Defendant Lynne Abraham in her official capacity as Philadelphia District Attorney and Plaintiff's response thereto; and for the reasons stated in the Court's accompanying memorandum;

**IT IS ORDERED:** Defendants' motion for summary judgment is **GRANTED** and Judgment shall be entered in favor of Defendant Lynne Abraham in her official capacity as Philadelphia District Attorney, and against Plaintiff William Harris.

RAYMOND J. BRODERICK, J.