

Brady Lives

By: Wayne C. Fricke; Aug 2007

The Ninth Circuit, on July 9, 2007 decided the case of United States v. Jernigan, ___ F.3rd ___ (2007) which reaffirmed principles expressed in the United States Supreme Court case of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). This case involved a woman being convicted of a bank robbery. After being in prison for a couple of years, she learned that there was another woman with a similar appearance who had robbed several banks in the area at the time that the robbery for which she was convicted occurred. The government knew of this information but had inadvertently failed to turn it over to the defendant. She moved for a new trial pursuant to Federal Rule of Criminal Procedure 33, which was subsequently denied by the District Court, after which the defendant appealed. The original panel of the Ninth Circuit Court of Appeals affirmed the District Court, but after hearing the case *en banc*, the Ninth Circuit in a 13-2 decision reversed and ordered a new trial.

In the strongly worded opinion the majority noted that “by suppressing this evidence, the prosecution arrogated to itself a central function belonging to the criminal jury and pursued its role as adversary in exclusion to its role as architect of a just trial.”

In order to prove a Brady violation, a defendant must demonstrate that 1) the suppressed evidence would be favorable to the accused and 2) that the evidence that was suppressed was done so either willfully or inadvertently and 3) the suppressed evidence must be material to the guilt or innocence of the defendant. The government in this case did not dispute the first two prongs, but only disputed the third issue, which was whether the evidence was material. In reversing the panel decision and the District Court, the Court noted that materiality is based on whether the suppressed evidence would have created a “reasonable probability of a different result”, which means that the defendant must only show that “the government’s evidentiary suppression undermines confidence in the outcome of the trial. Citing Kyles v. Whitley, 514 U.S. 419, 434, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). Using this standard, the court must analyze the withheld evidence in the context of the entire record, which in this case included testimony from five eye-witnesses which described the robber as a “very, very short Hispanic looking lady, having acne, kind of pocked, very dark hair.”

The withheld evidence was of a second robber who had a similar appearance -- a Hispanic or Oriental lady with “a little acne, dark brown hair, with a pock-marked face” -- and with a similar modus operandi occurring in all the robberies. This, in context with the exculpatory evidence that the defendant provided at trial, was enough for the *en banc* court to find it was material and that the defendant should receive a new trial.

This case demonstrates the importance of rules that allow for the reopening of cases after a conviction. Rules that allow for the reopening of cases based on new evidence can mean the avoidance of many years in prison and the possible exoneration of an innocent person. Brady and the court rules are important tools in this endeavor, along with due diligence on the part of the attorneys once new evidence comes to light.

End

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