

A defendant was convicted of burglary following a jury trial in state court. After trial, defense counsel learned that the prosecution had failed to disclose that the key witness against the defendant had previously been convicted of perjury in another case. The defense filed a motion for a new trial.

The trial court rejected the defense argument and upheld the conviction because state discovery rules did not require the disclosure. The defendant then filed an appeal, arguing that the prosecution's failure to disclose this prior perjury conviction had violated his federal constitutional rights.

Can the state appellate court overturn the conviction based on the prosecution's failure to disclose the witness's prior perjury conviction?

- A. No, because discovery is regulated by state rather than federal procedure.
- B. No, because the prior conviction was mere impeachment rather than evidence of actual innocence.
- C. Yes, if there was a reasonable probability of a different outcome.
- D. Yes, regardless of the likelihood of a different outcome.

Incorrect

Correct answer C

Collecting Statistics

52 secsTime Spent

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Explanation:

In *Brady v. Maryland*, the Supreme Court held that a criminal defendant's **due process** rights are violated when the prosecution **prejudices** the defendant by **failing to timely disclose evidence** that is both:

favorable to the defendant – evidence used to **negate** a **defendant's guilt** or **mitigate punishment** (exculpatory evidence) or to **discredit** the **prosecution's witness** (impeachment evidence) *and*

material to guilt or punishment – there is a **reasonable probability** that, had the evidence been disclosed, the **result** of the proceeding would have been **different**.

Here, the prosecutor failed to disclose that its key witness against the defendant had previously been convicted of perjury. This evidence is favorable to the defendant because he could have used it to impeach the witness's testimony. Therefore, the state appellate court can overturn the defendant's conviction if there also was a reasonable probability of a different outcome had the witness's prior perjury conviction been disclosed (**Choice D**). That is because this would show that such evidence is material.

(Choice A) In a state court proceeding, discovery is regulated by state rather than federal procedure. However, state procedure must comply with federal constitutional requirements, including due process.

(Choice B) The prosecution must disclose favorable and material evidence to comply with due process. Evidence is favorable whether it is evidence of actual innocence or mere impeachment evidence (as seen here).

Educational objective:

A defendant's due process rights are violated when the prosecution prejudices the defendant by failing to timely disclose *Brady* evidence—ie, evidence that is favorable to the defendant (exculpatory or impeachment evidence) and material to guilt or punishment.

References

Brady v. Maryland, 373 U.S. 83, 87 (1963) (recognizing that the prosecution's withholding of favorable and material evidence violated due process).

United States v. Bagley, 473 U.S. 667, 682 (1985) (discussing when a failure to disclose evidence favorable to the defendant is material).

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Impeachment

