

A prosecutor presented to a federal grand jury the testimony of a witness in order to secure a defendant's indictment for theft of government property. The prosecutor did not disclose to the grand jury that the witness had been convicted four years earlier of perjury. The grand jury returned an indictment, and the defendant pleaded not guilty.

Shortly thereafter, the prosecutor took the case to trial, calling the witness to testify before the jury. The prosecutor did not disclose the witness's prior perjury conviction until the defense was preparing to rest. Defense counsel immediately moved for a mistrial, which the court denied. Instead, the court allowed the defense to recall the witness for the purpose of impeaching him with this conviction, but the witness could not be located. The court then allowed the defense to introduce documentary evidence of the witness's criminal record to the jury before resting its case. The jury convicted the defendant.

The defendant has moved for a new trial, arguing that the prosecutor's failure to disclose the witness's prior conviction in a timely manner violated the defendant's right to due process of law.

If the court grants the defendant's motion, what will be the most likely reason?

- A. The court found it reasonably probable that the defendant would have been acquitted had the defense had timely access to the information about the witness's conviction.
- B. The court found that the prosecutor had deliberately delayed disclosing the witness's conviction to obtain a strategic advantage.
- C. The defendant was unable to cross-examine the witness about the conviction.
- D. The prosecutor failed to inform the grand jury of the witness's conviction.

Explanation:

In *Brady v. Maryland*, the Supreme Court held that a 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 timely disclose its witness's prior perjury conviction (favorable evidence) since that information was not shared until the defense was preparing to rest and the witness could not be located. Therefore, the court would most likely grant the defendant's motion for new trial if it found it reasonably probable that the defendant would have been acquitted had the defense timely received that information (material evidence).

(Choice B) The prosecution violates a defendant's due process rights when it fails to timely disclose favorable and material evidence for *any* reason—purposely or unintentionally. Therefore, a finding that the prosecutor purposely delayed disclosing the witness's conviction for a strategic advantage is no basis for granting the motion.

(Choice C) The prosecution's untimely disclosure did not prevent the defendant from cross-examining the witness about the conviction (no violation of Sixth Amendment right to confront adverse witnesses). However, the untimely disclosure did violate the defendant's due process rights since it is probable that the outcome would have been different had the witness's conviction been disclosed earlier.

(Choice D) In *United States v. Williams*, the Supreme Court explained that a prosecutor is not required to present *Brady* evidence to the grand jury. Therefore, the prosecutor's failure to inform the grand jury of the witness's conviction did not violate due process and is not a basis for granting the defendant's motion.

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

U.S. Const. amend. V (federal due process clause).

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

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DNA Lab Report

crime scene	defendant	suspect 2
		

