SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

CRIM. TERM PART 38
Indictment No. 70208-20
Motion Seq. No. C-1

POST HEARING DECISION

Present : Honorable Helene F. Gugerty, A.S.C.J.

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THE PEOPLE OF THE STATE OF NEW YORK

Anne T. Donnelly, D.A.
Nassau County
By: Daniel Bresnahan Esq.
Veronica Guariglia, Esq.
Assistant District Attorneys

-Against-

JUNIOR MALDONADO,

Jason Russo, Esq.
Attorney for Defendant

Defendant.

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The following papers were read post CPL §330 hearing:	Papers Numbered
Defendant's Post Hearing Memorandum in Support of Defendant's Motion to Set Aside the Verdict, Affidavits (Affirmations), ...	1
People's Post Hearing Memorandum in Opposition to Defendant's Motion to Set Aside the Verdict, Affidavits (Affirmations), Exhibits Annexed.....	2

PROCEDURAL HISTORY

On May 17, 2023, the defendant, Junior Maldonado (herein referred to as "defendant"), moved by notice of motion, pursuant to CPL §330.30(1), to set aside the jury's verdict rendered on March 16, 2023. The jury found defendant guilty of Murder in the Second Degree, in

violation of Penal Law section 125.25(1), Criminal Possession of a Weapon in the Second Degree, in violation of Penal Law section 265.03(1)(b), and Criminal Possession of a Weapon in the Second Degree, in violation of Penal Law section 265.03(3).

The People, by affirmation of Assistant District Attorney Kirk Sendlein, dated June 28, 2023, opposed the motion.

On July 27, 2023, this Court ordered a CPL §330 hearing on the matter.

On November 28, 2023, this Court held a CPL §330 hearing.

At the hearing, defense counsel called one witness, ADA Kirk Sendlein. The prosecution called no witnesses. Following the hearing, the Court directed the parties to submit written arguments.

STATEMENT OF FACTS

On August, 16, 2020, at 1:40 a.m., Alexis Gonzalez-Sanchez (herein referred to as "decedent") was shot and killed in a lot at 445 Union Avenue, Westbury N.Y. The lot is adjacent to his home, located at 439 Union Avenue. Earlier that evening, decedent was hosting a party at his home. Witness Jerry Navarette (hereinafter referred to as "witness Navarette"), a friend of decedent, observed four young men, whom he did not know, at the party appearing to him to be in their early twenties. Defendant was one of those four young men.[1] Two separate fights simultaneously occurred outside of decedent's home during the party, involving a total of 40 people. One of the fights involved approximately 10 - 12 people, including a male waiving a gun from side to side in an effort to warn anyone who got close that they would be shot. Upon observing the male swinging the gun, witness Navarette turned away to remove his wife, who

[1]On the date of the incident, defendant was 15 years old.

was also present, from the scene. Witness Navarette then heard two shots. Decedent died from the shots fired. No one, including witness Navarette, observed who fired the shots.

On August 16, 2020, witness Navarette provided police with a description of the alleged perpetrator 35 minutes after the incident occurred.

On August 20, 2020, the Nassau County Police Department distributed to the public a $5,000 Crime Stoppers reward poster regarding the incident.

On August 26, 2020, witness Navarette identified defendant in a photo array identification procedure as the perpetrator who waived a gun.

On September 25, 2020, witness Navarette testified before the Grand Jury.

In the spring of 2022, ADA Sendlein became the third assistant district attorney assigned to the instant matter, replacing his predecessors.[2]

Conversation #1 between ADA Sendlein and witness Navarette:

In February, 2023, just weeks before trial, ADA Sendlein first spoke with witness Navarette by telephone. After introducing himself to witness Navarette over the phone, ADA Sendlein told witness Navarette that he would be contacting him shortly. During this initial conversation, witness Navarette did not share with ADA Sendlein anything about his family situation.

Conversation #2 between ADA Sendlein and witness Navarette:
(1st Conversation about Reward)

A few days later, during a second phone call from ADA Sendlein, Mr. Navarette shared

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[2] In August of 2021, ADA Sendlein began working as an assistant district attorney in the Homicide Bureau of the Nassau County District Attorney's Office. Prior to that, he was a prosecutor for over 13 years at the Queens District Attorney's Office, in which three of those years he was assigned to its Homicide Bureau.

information about his family; that his wife just had a baby. Witness Navarette asked if he was eligible or entitled to the $5,000 Crime Stoppers reward because he had provided information to the police about the case right away. (H: P15, L 2 - 25, P16, L1).

ADA Sendlein did not disclose witness Navarette's inquiry about eligibility for the reward to defense counsel. (H: P16, L14 - 16). ADA Sendlein informed witness Navarette that he would reach out to Detective Malone, who had previously worked on the case, and inquire about the reward. ADA Sendlein called Det. Malone and confirmed that there was a reward offered in the amount of $5,000. ADA Sendlein asked Det. Malone how those things are handled. Det. Malone responded that it is handled by the police department after trial.

(H: P16, L20 - 25, P17, L1 - 10).

Conversation #3 Between ADA Sendlein and witness Navarette:
(2nd Conversation about Reward)

Thereafter, ADA Sendlein called witness Navarette by phone to inform him that these **things** are handled after the case is closed. (H: P17, L18 - 25, P18, L1 - 7). *Emphasis added.*

Conversation #4 between ADA Sendlein and witness Navarette:
(3rd Conversation about reward on a Saturday in February 2023)

On a Saturday leading up to the trial, ADA Sendlein met with witness Navarette at the Nassau County District Attorney's Office to prepare him to testify at trial. During this meeting, witness Navarette talked about his baby and again asked about his eligibility for the reward money. (H: P42, L11 - 22; P58, L10 - 24).

Conversation #5 between ADA Sendlein and witness Navarette:
(4th Conversation about Reward)

On March 16, 2023, the same night as the verdict, ADA Sendlein called witness

Navarette to inform him about the guilty verdict. (H: P18, L8 - 15; P43, L24 - 25, P44, L1-2). Witness Navarette then asked ADA Sendlein for the return of his sneakers, which had previously been vouchered as evidence. He then asked ADA Sendlein, **what about the $5,000?** *Emphasis added.* (H: P18, L16 - 23). ADA Sendlein responded to witness Navarette that he would ask Det. Malone. ADA Sendlein never did ask Det. Malone about the reward money.

On March 17, 2023, ADA Sendlein contacted the Court and defense counsel, Jason Russo, Esq. by email (H: Defense Exhibit A; People's Exhibit 1) to inform all parties about witness Navarette's inquiry about the reward money during their telephone conversations in February 2023 and on March 16, 2023. ADA Sendlein did not inform the Court or Mr. Russo about the Saturday in person (third) conversation about the reward money initiated by witness Navarette.

On March 22, 2023, ADA Sendlein received a text message from witness Navarette asking for a call back. Witness Navarette informed ADA Sendlein about a message intended for him, but erroneously sent to his wife's phone. The message was from defense counsel's investigator, Jose Febo, asking to speak with him about his experiences as a witness at the trial.

In response to this text message, ADA Sendlein, in the presence of his supervisor, spoke over speaker phone with witness Navarette in a series of two back to back phone calls. ADA Sendlein told witness Navarette that it was his choice whether to speak with the investigator. ADA Sendlein also informed witness Navarette that one of the experiences will likely be witness Navarette's expectation for a reward, to which witness Navarette cut off ADA Sendlein and stated that there was never any promise made and he didn't think he was getting money to testify. (H: P48, L8 - 25, P49, L1 - 6).

POSITION OF THE PARTIES

Defendant asserts in his post-hearing brief that because the People suppressed *Brady/Giglio* material prior to trial and prevented the defense from making use of it in a one-witness identification case in which the witness had either a financial interest in the outcome, or the belief that he had an interest, the verdict must be set aside and a new trial ordered.

Specifically, defendant asserts:

(1) that the suppressed material is favorable to the defense,

(2) that the exculpatory material was wrongfully withheld from the defense, and

(3) that failure to disclose the exculpatory material caused severe prejudice to defendant, violating his Due Process rights and Confrontation Clause rights.

In particular, the People's failure to disclose the exculpatory material denied defendant a line of impeachment questioning of witness Navarette, a material witness. Defendant was denied a line of inquiry that witness Navarette had a financial interest and motive to fabricate his testimony regarding his numerous inquiries into his eligibility for a $5,000 Crime Stoppers reward. Defendant asserts that witness Navarette's motive to fabricate his testimony is supported by the fact that the Crime Stoppers reward was posted 6 days prior to the photo-array identification of defendant by witness Navarette.

The People assert in their post-hearing brief that defendant has not met his burden of proving at a hearing, by a preponderance of the evidence, that witness Navarette's inquiry into a reward was material; such that there is a reasonable probability that the verdict would have been different had the jury been aware of witness Navarette's inquiry about the reward.

Additionally, the People assert that witness Navarette's inquiry into a reward was not

material because:

(1) Given the close relationship between witness Navarette and the decedent, witness Navarette had a strong personal motive to see that the actual perpetrator be prosecuted;

2) Witness Navarette immediately came forward to the police and gave a detailed description of the perpetrator, including his mushroom shaped haircut that closely matched defendant's appearance; and

(3) There was a plethora of other evidence corroborating witness Navarette's testimony and independently establishing defendant's guilt, including: (a) other witness testimony about the occurrence, (b) electronic evidence establishing defendant's presence at the scene of the occurrence, and (c) a cooperating witness who was a friend of defendant who identified defendant as being at the scene of occurrence and confessing to the commission of the murder.

The People further assert that these facts belie the claim that witness Navarette had falsely accused defendant for potential monetary gain. Therefore, there is no reasonable probability that the verdict would have been different had the jury been aware of witness Navarette's inquiry about the reward.

The People concede their failure to disclose impeachment material to defense. However, the People assert that their failure to disclose the impeachment material is not fatal in that it is not enough to establish a *Brady/Giglio* violation requiring reversal. Specifically, the People argue that if the *Brady* material had been turned over, defense counsel would have been wise not to ask about it on cross-examination because it would have hurt defendant by giving rise to prior

consistent statements by witness Navarette. The People further argue that defendant would have gained very little, if nothing, by questioning witness Navarette about the reward because such cross-examination would have opened the door to a re-direct of prior consistent statements, thereby strengthening witness Navarette's identification of defendant.

CONCLUSIONS OF LAW

DISCOVERY VIOLATION

CPL §245.20(l) states,

> The prosecution shall disclose to the defendant, and permit the defendant to discover, inspect, copy, photograph and test, all items and information that relate to the subject matter of the case and are in the possession, custody or control of the prosecution or persons under the prosecution's direction or control, including but not limited to:
>
> A summary of all promises, rewards and inducements made to, or in favor of, persons who may be called as witnesses, **as well as requests for consideration by persons who may be called as witnesses** and copies of all documents relevant to a promise, reward or inducement. *Emphasis added.*

At the outset, the People failed to abide by their statutory obligation pursuant to C.P.L. §245.20(l) in that they failed to disclose prior to trial that on numerous occasions, requests for consideration by witness Navarette were made to ADA Sendlein for the $5,000 Crime Stoppers reward. Furthermore, despite this failure to disclose, the People nevertheless filed a Certificate of Compliance on February 27, 2023, one week prior to trial.

The Court of Appeals in *People v Cwikla*, 46 NY2d 434, 441 (1979), held that non-disclosure of evidence denied defendant his right to a fair trial where, at the very least, the witness **hoped** he could receive a benefit for his testimony. *Emphasis added.* In *Cwikla*, the People failed to disclose letters written by the District Attorney to the Parole Board detailing defendant's cooperation in the prosecution of his co-defendant's murder case. The defendant, at

the very least, hoped that such correspondence between the District Attorney and the Parole Board would result in a benefit.

Similarly, in the case at bar, witness Navarette's discussions with ADA Sendlein on four occasions of his eligibility to receive the $5,000 Crime Stoppers reward demonstrates, at the very least, his **hope** of receiving the benefit.

***BRADY* VIOLATION**

Pursuant to *Brady v, Maryland*, 373 US 83,87 (1963), the People have an obligation to disclose exculpatory evidence, in their possession, which is favorable to the defendant and material to his or her guilt or innocence. Furthermore, pursuant to *Giglio v. United States,* 405 US 150, 154(1972), this disclosure obligation extends to evidence in the People's possession that could be used by the defense to impeach the credibility of a witness whose testimony may be determinative of guilt or innocence.

The Supreme Court, in *Strickler v Greene*, 527 U.S. 263, 281-82 (1999), held that to establish a *Brady* violation fatal to a judgment of conviction, a defendant must show:

(1) the People suppressed evidence;

(2) that evidence was favorable to the defense; and

(3) it was "material" to guilt or punishment.

Pursuant to a C.P.L. §330.40(f) hearing, C.P.L. §330.40(g) states: "Upon such hearing, the defendant has the burden of proving by a preponderance of the evidence every fact essential to support the motion." This Court finds that defendant has met his burden of proving, by a preponderance of the evidence, every fact essential to support the motion that (1) a *Brady*

violation occurred, (2) it was favorable to the defense and (3) it was "material" to guilt or punishment.

This Court rejects the People's argument that the *Brady* violation is not fatal and the argument that it does not require reversal for the following reasons in totality:

I. The People Suppressed Evidence

The People concede that impeachment material was suppressed. Specifically, the People concede that they failed to turn over information pertaining to witness Navarette's repeated inquiry to ADA Sendlein of the Crime Stoppers $5,000 reward. Therefore, this Court finds that a *Brady/Giglio* violation occurred due to the People's failure to disclose impeachment material regarding witness Navarette's repeated inquiry into a $5,000 Crime Stoppers reward in this matter.

11. The Evidence was Favorable to the Defense

This Court finds that the evidence was favorable to the defense. Failure to disclose the exculpatory material denied defendant the use of impeachment material to cross-examine a material witness. The defense was denied a line of questioning that witness Navarette, a material witness, had a financial interest and motive to fabricate his testimony as the Crime Stoppers reward was posted 6 days before the photo-array identification.

This Court rejects the People's argument that if the *Brady* material had been turned over, defense counsel would have been wise not to ask about it on cross-examination because it would have hurt defendant by giving to prior consistent statements by witness Navarette. The Court also

rejects the People's contention that defendant would have gained very little, if nothing, by questioning witness Navarette about the reward because such cross-examination would have opened the door to a re-direct of prior consistent statements, thereby strengthening witness Navarette's identification of defendant. This is not for the People to speculate. Furthermore, although witness Navarette provided a description to the police prior to the Crime Stoppers flyer being made public, it wasn't until after the distribution of the Crime Stoppers flyer to the public that witness Navarette made an identification of defendant as the perpetrator.

As defendant contends, the People's failure to provide the impeachment material, whether in good faith or bad faith, deprived defendant of a line of impeachment questioning of witness Navarette, calling into question his credibility, his motive to falsify, and his interest in the outcome of the case. The Court finds that the impeachment material is clearly favorable to the defense.

III. The Impeachment Evidence was Material to Guilt or Punishment

The Court of Appeals has held that for evidence to be deemed material, there must be a showing that there is a "reasonable possibility" that had the evidence been disclosed, the result of the trial would have been different. *People v Vilardi*, 76 NY 2d 67, 77 (1990).

In the case at bar, the People failed to disclose to defense counsel a series of four conversations the assigned prosecutor had with a material witness regarding a deliberate inquiry as to his eligibility for a $5,000 Crime Stoppers reward.

> **1st Conversation about reward** (by phone): Witness Navarette brought up to ADA Sendlein that he just had a baby and he wanted to know **if he was eligible or entitled to the $5,000 reward**, given that he had spoken to the

police in the infancy of the case. *Emphasis added.* (H: P15, L2 -25, P16, L1)

2nd Conversation about reward (by phone): ADA Sendlein then called witness Navarette by phone to inform him that these things are handled after trial. (H: P17, L18-25, P18, L1-4).

3rd Conversation about reward (in-person): Witness Navarette spoke about his baby and again asked "**anything with the Crime Stoppers or the reward?**" *Emphasis added.* (H: P42, L17-22).

4th Conversation about reward (by phone): After being informed by ADA Sendlein that there was a guilty verdict that day, witness Navarette first asked for his sneakers (which had been vouchered as evidence), and then asked, "**what about the $5,000?....**" ADA Sendlein stated, "At first I didn't know what he was talking about, I laughed and then he said, **"No, what about the $5,000?** *Emphasis added.*
(H: P18, L16-25- P19, L1-3).

The inquiries were made within weeks, if not days, of each other with one being made the same day the jury returned a guilty verdict. Additionally, these inquiries were made in the context of witness Navarette just having had a baby.

Prior to trial, ADA Sendlein failed to notify defense counsel that on three separate occasions witness Navarette made inquiry as to whether he was entitled to a $5000 reward offered by Crime Stoppers. All three conversations prior to trial about the reward money occurred in February, 2023. Two of those conversations were by phone a few days apart. The third conversation was in person at the District Attorney's office on a Saturday shortly before trial. Witness Navarette was present at the District Attorney's office in order for ADA Sendlein to prepare him to testify at the impending trial. The fourth conversation between ADA Sendlein and witness Navarette occurred by phone shortly after the jury verdict on March 16, 2023.

It wasn't until March 17, 2023, the day after the verdict, that ADA Sendlein disclosed via email to defense counsel and the Court three of the four conversations regarding inquiry of a monetary reward by witness Navarette. (H: Defense Exhibit A; People's Exhibit 1). Additionally, it wasn't until November 28, 2023 during cross examination of ADA Sendlein by ADA Veronica Guariglia at the C.P.L. §330 hearing, that for the first time, the third conversation about the reward was disclosed to defense counsel and the Court. (H: P42, L10-21; P58, L9 -25, P59, L1-17).

The Court finds this troubling as this last disclosure was completely omitted in ADA Sendlein's post verdict email to the Court and defense counsel dated March 17, 2023, as well as his sworn Affirmation in Opposition to Defendant's Motion to Set Aside the Verdict dated June 28, 2023.

Thus, the Court finds that the impeachment evidence was material. The repeated acts of intentional inquiries into the eligibility of the Crime Stoppers reward by a material witness gives rise to the materiality of the information and demonstrates the prejudice to defendant for not having had the opportunity to confront a material witness and cross-examine him as to his interest in the outcome of the case and his motive to fabricate. Thus, there is a "reasonable possibility" that had the evidence been disclosed, the result of the trial would have been different.

The Court of Appeals in *People v. Seaman*, 82 NY2d 1, 8 (1993), held where the case turns on the jury's assessment of the sole identification witness whose credibility was a pivotal consideration, any error in failing to provide *Giglio/Brady* material cannot be said to be harmless.

Similarly, in the case at bar, the jury's assessment of witness Navarette's testimony as a material witness and the only witness to identify defendant as the perpetrator who was waiving a

gun was significant to the jury's verdict. This was demonstrated by five separate requests from the jury for a read back of testimony of witness Navarette during their deliberations. (T: *Court Exhibits IX, X, XV, XIX, and XX*).

Therefore, for the reasons stated above, defendant has established, by a preponderance of the evidence, every fact essential to support the motion that (1) a *Brady* violation occurred; (2) it was material; and (3) there was a reasonable possibility that had the evidence been disclosed, the result of the trial would have been different. *See, People v Cwikla*, 46 NY2d 434, 441 (1979).

Accordingly, it is

ORDERED, that the defendant's motion to set aside the verdict is **GRANTED** in all respects. The foregoing constitutes the decision and order of this Court. All applications not specifically addressed herein are denied.

Hon. Helene F. Gugerty
Acting Supreme Court Justice

Date: February 8, 2024
Mineola, NY 11501