NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT OP 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
TERRELL HARRIS	:	
Appellant	:	No. 1451 EDA 2022

Appeal from the Judgment of Sentence Entered February 18, 2022, in the Court of Common Pleas of Philadelphia County, Criminal Division at No(s): CP-51-CR-0005800-2019.

BEFORE: DUBOW, J., KUNSELMAN, J., and KING, J.

MEMORANDUM BY KUNSELMAN, J.: **FILED JUNE 01, 2023**

Terrell Harris appeals from the judgment of sentence entered after the trial court found him guilty of several offenses. After review, we affirm upon the trial court's opinion.

Briefly, in July 2019, a conflict arose between Harris and a neighbor in his building, Henry Thompson, over the disposal of a mattress and box spring infested with bed bugs. This dispute ultimately led to Harris hitting Thompson with an aluminum baseball bat. Afterwards, the police arrived. Harris admitted to striking Thompson. Harris was arrested and charged.

On December 7, 2021, following a bench trial, the court found Harris guilty of aggravated assault, possessing an instrument of crime, simple assault, and recklessly endangering another person.[1]

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[1] 18 Pa.C.S.A. §§ 2702(a), 907(a), 2701(a), and 2705.

Harris' sentencing hearing took place on February 18, 2022. During the hearing, remarks relevant to this appeal were made both by Assistant District Attorney Adam Farraye and by Harris' trial counsel, Assistant Defender Owen Doherty of the Defender Association of Philadelphia. While advocating for a probationary sentence, Attorney Doherty stated:

> I also want to point out, Your Honor, that before this trial happened in December, I did speak directly with [Mr. Thompson] and I asked him what he was looking for here, like what — how he felt [aggrieved], Your Honor. And [Mr. Thompson] told me that he didn't want to jam [Harris] up. That he didn't want to have him in jail or anything like that. That he just wanted expenses, medical expenses and that's it.

Later in the hearing, ADA Farraye responded in relevant part:

> Your Honor, counsel brought up his conversation with [Mr. Thompson] in this case. I did not intend to bring this up in sentencing; however, as Your Honor may remember, moments before we were to proceed to trial at the trial date, I did ask for a brief hold. As I indicated, Mr. Doherty had taken [Mr. Thompson] from the galley behind me, out into the hall and had spoken to [Mr. Thompson]. I did speak to [Mr. Thompson] after that, who indicated to me that defense counsel had offered him, what I believe was, $2,000 for pain and suffering so that the case could be taken care of.

Mr. Doherty immediately objected to ADA Farraye's remarks and requested that they be stricken from the record. At that point, the Court offered to postpone the sentencing hearing and to give the parties an opportunity to have an evidentiary hearing regarding the above described statements alleged to have been made by Mr. Thompson. Both Mr. Doherty and ADA Farraye responded that they wished to proceed with the sentencing hearing.

At the conclusion of the sentencing hearing, the [c]ourt imposed an aggregate sentence of three to six months of incarceration, followed by two years of probation.

Trial Court Opinion, 7/25/2022, at 4 (footnote and citations omitted).

Harris filed a post-sentence motion seeking a new trial. Attached to the motion was an affidavit by Attorney Doherty in which he stated in part: "At no time did I offer [Mr. Thompson] money to take care of the case." Harris argued that Thompson's statement to ADA Farraye suggesting otherwise was not only false but also subjected Thompson to criminal liability for making a false report to law enforcement authorities and, for that reason, Thompson's statement to ADA Farraye should have been disclosed to Harris prior to trial as impeachment material. Because it was not, it constituted a ***Brady*** violation, and/or after discovered evidence which should have been disclosed. The trial court denied Harris' motion.

Harris filed this timely appeal. Harris and the trial court complied with Pennsylvania Rule of Appellate Procedure 1925. Harris raises the following two issues on appeal which we have reordered:

> 1. Should the [t]rial [c]ourt have granted [Harris'] request for a new trial based on the ***Brady*** claim?
>
> 2. Should the [t]rial [c]ourt have granted [Harris'] request for a new trial based on the after-discovered evidence claim?

Harris' Brief at 4.

Here, the trial court authored a thorough and well-reasoned opinion pursuant to Rule 1925(a). The court addressed Harris' request for a new trial based upon Harris' claims of a ***Brady*** violation and after-discovered evidence under Pennsylvania Rule of Criminal Procedure 720(c).

Upon review, we discern no legal error or abuse of discretion in the trial court's analysis. As such, we adopt the court's opinion as our own in denying Harris' request for relief. ***See*** Trial Court Opinion, 7/25/2022, at 6-10 (explaining that Harris failed to establish the criteria for a ***Brady*** violation: 1) it was unlikely Mr. Thompson lied about his conversation with Mr. Doherty but instead, as a layperson, likely misunderstood what transpired and thus it was speculative that the conversation would constitute impeachment material; 2) nothing in the record suggested that the Commonwealth was aware prior to trial of any issues with Mr. Thompson's statements; and 3) Harris' alleged impeachment evidence was not material or reasonably probable to change the outcome of the case as Harris admitted to hitting Mr. Thompson); and at 10-11 (explaining that Harris did not satisfy the four-prong test to justify a new trial based upon after-discovered evidence under Pennsylvania Rule of Criminal Procedure 720(c) because Harris impermissibly intended to use the claimed after-discovered evidence only for impeachment purposes, and Mr. Thompson's statement and conduct were not material so that a different outcome would be likely). [2]

Judgment of sentence affirmed.

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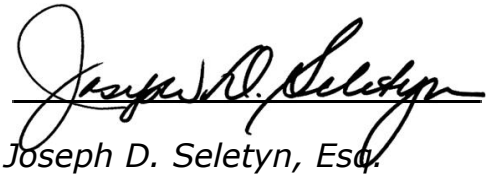
[2] The parties are directed to attach the trial court's July 25, 2022, opinion to this memorandum in any future appeal.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/1/2023

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CP-51-CR-0005800-2019**
v.	:	
	:	
TERRELL HARRIS	:	**1451 EDA 2022**
	:	

OPINION

KYRIAKAKIS, J. **July 25, 2022**

On December 7, 2021, at the conclusion of a waiver trial before this Court, defendant Terrell Harris was convicted of aggravated assault (18 Pa.C.S. § 2702(a)), possessing an instrument of crime (18 Pa.C.S. § 907(a)), simple assault (18 Pa.C.S. § 2701(a)), and recklessly endangering another person (18 Pa.C.S. § 2705). On February 18, 2022, the Court imposed an aggregate sentence of three to six months of incarceration, followed by two years of probation. Defendant filed a post-sentence motion, which the Court denied on May 20, 2022.

Defendant has now appealed from the judgment of sentence entered by the Court, contending that the Court erred by denying defendant's post-sentence motion for a new trial based on the Commonwealth's failure to disclose impeachment material. More specifically, defendant argues a new trial was warranted because (1) the Commonwealth's failure to disclose impeachment material resulted in a constitutional violation of due process under *Brady v. Maryland*, 373 U.S.

83 (1963), and (2) the impeachment material constituted after-discovered evidence. Defendant's [Section] 1925(B) Statement ("Statement of Errors") at ¶¶ 1-2.[1] For the reasons set forth below, defendant's claims are without merit, and the judgment of sentence should be affirmed.

I. FACTUAL BACKGROUND

In July of 2019, conflict arose between defendant and a neighbor in his building, Henry Thompson, over the disposal of a mattress and box spring infested with bed bugs. Notes of Testimony ("N.T.") 12/7/21 at 12, 24-25. At the time, Mr. Thompson had been living on the building's third floor, and defendant had been residing in a first-floor apartment. *Id.* at 11.

On or about July 25, 2019, Mr. Thompson placed the mattress and box spring in the building's driveway so that they could be collected as trash. *Id.* at 12, 24-25, 28. After seeing the mattress and box spring, defendant told Mr. Thompson that he could not leave the items there, but Mr. Thompson did not move them. *Id.* at 12. At some point afterwards, defendant himself moved the mattress and box spring to an open lot three houses down from their building. *Id.* at 12, 45. Defendant also left a note on the mattress listing Mr. Thompson's name, address, and phone number. *Id.* at 27, 46-47.

On July 26, 2019, Mr. Thompson learned that defendant had put the note with Mr. Thompson's identifying information on the mattress. *Id.* at 13, 17. Mr. Thompson brought the mattress and box spring back to the building, and then he knocked on defendant's door to confront him about the note. *Id.* at 28, 46. After defendant came to the door, the two of them began arguing and then started pushing, shoving and swinging their arms at each other during a scuffle in the driveway. *Id.* at 13, 29-30.

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[1] Defendant's Statement of Errors asserts that the Court's denial of defendant's post-sentence motion was error for the reasons previously stated in defendant's post-sentence motion. Statement of Errors at ¶¶ 1-2.

After the scuffle, defendant went back into his apartment, and Mr. Thompson then grabbed the box spring and tossed it into the building's backyard. *Id.* at 14, 28-29. After that, as Mr. Thompson was walking to get the mattress, defendant came out of the house with an aluminum baseball bat. *Id.* at 14, 29. Defendant began attacking Mr. Thompson with the bat, first striking his arm and then his head. *Id.* at 15. Eventually, Mr. Thompson grabbed the bat out of defendant's hand, at which point defendant ran back into his apartment. *Id.*

Officers from the Philadelphia Police Department arrived at the building that evening and observed that Mr. Thompson was covered in blood and was continuing to bleed from his head, with blood dripping down onto his body. *Id.* at 34. The officers also spoke to defendant, who admitted that he had struck Mr. Thompson with the baseball bat. *Id.* at 35. An ambulance then took Mr. Thompson to the hospital for treatment of his injuries, which required three staples in his head. *Id.* at 16.

II. PROCEDURAL HISTORY

On December 7, 2021, after waiving his right to a jury trial, defendant proceeded with a bench trial before this Court. During the trial, the Commonwealth presented the testimony of Mr. Thompson and Police Officer Peter Sztenderowicz of the Philadelphia Police Department, as well as three photographs of the injuries sustained by Mr. Thompson (Commonwealth Exhibits C-1A, C-1B, and C-1C). Defendant testified on his behalf. At the conclusion of the trial, defendant was convicted of aggravated assault, possessing an instrument of crime, simple assault, and recklessly endangering another person.

Defendant's sentencing hearing took place on February 18, 2022. During the hearing, remarks relevant to this appeal were made both by Assistant District Attorney (ADA) Adam

Farraye and by defendant's trial counsel, Assistant Defender Owen Doherty of the Defender Association of Philadelphia. While advocating for a probationary sentence, Mr. Doherty stated:

> I also want to point out, Your Honor, that before this trial happened in December, I did speak directly with [Mr. Thompson] and I asked him what he was looking for here, like what – how he felt [aggrieved],[2] Your Honor. And [Mr. Thompson] told me that he didn't want to jam [defendant] up. That he didn't want to have him in jail or anything like that. That he just wanted expenses, medical expenses and that's it.

N.T. 2/18/22 at 9-10. Later in the hearing, ADA Farraye responded in relevant part:

> Your Honor, counsel brought up his conversation with [Mr. Thompson] in this case. I did not intend to bring this up in sentencing; however, as Your Honor may remember, moments before we were to proceed to trial at the trial date, I did ask for a brief hold. As I indicated, Mr. Doherty had taken [Mr. Thompson] from the gallery behind me, out into the hall and had spoken to [Mr. Thompson]. I did speak to [Mr. Thompson] after that, who indicated to me that defense counsel had offered him, what I believe was, $2,000 for pain and suffering so that the case could be taken care of.

Id. at 20-21.

Mr. Doherty immediately objected to ADA Farraye's remarks and requested that they be stricken from the record. *Id.* at 21. At that point, the Court offered to postpone the sentencing hearing and to give the parties an opportunity to have an evidentiary hearing regarding the above-described statements alleged to have been made by Mr. Thompson. *Id.* at 22. Both Mr. Doherty and ADA Farraye responded that they wished to proceed with the sentencing hearing. *Id.* at 24. At the conclusion of the sentencing hearing, the Court imposed an aggregate sentence of three to six months of incarceration, followed by two years of probation.

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[2] The phrase "how he felt to grieve" in page 9 of the Notes of Testimony for February 18, 2022 should have been transcribed as "how he felt aggrieved." *See* Defendant's Post-Sentence Motion for a New Trial in the Interests of Justice at ¶ 5.

On February 28, 2022, defendant filed a Post-Sentence Motion for a New Trial in the Interests of Justice ("Post-Sentence Motion"). The Post-Sentence Motion was filed on defendant's behalf by Assistant Defender Isla A. Fruchter of the Defender Association of Philadelphia, and it included an affidavit by Mr. Doherty ("Doherty Affidavit," attached as Exhibit A to Post-Sentence Motion). In his affidavit, Mr. Doherty stated in part, "At no time did I offer the complainant money to take care of the case."[3] Doherty Affidavit at ¶ 18. Defendant argued in the Post-Sentence Motion that Mr. Thompson's statement to ADA Farraye suggesting otherwise was not only false but also subjected Mr. Thompson to criminal liability for making a false report to law enforcement authorities and, for that reason, Mr. Thompson's statement to ADA Farraye should have been disclosed to defendant prior to trial as impeachment material.

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[3] In his affidavit, Mr. Doherty described the entirety of his conversation with Mr. Thompson as follows:

> I said to the Complainant: "My name is Owen Doherty, and I am the public defender assigned to Mr. Harris. You do not have to talk to me if you do not wish to, but if you do, I would like to speak with you about the case." The Complainant responded affirmatively that he was willing to talk. I then asked the Complainant[,] "What is your goal for the case? How do you feel aggrieved?" The Complainant responded that he did not want to jam Mr. Harris up, that he did not want to see Mr. Harris in jail, and that all he wanted from the case was $2,000 for pain and suffering and medical expenses. I then thanked the Complainant and excused myself to speak with Mr. Harris. I did not have any further conversation with the Complainant. I did not tell the Complainant that we could work something out, nor did I talk to the [C]omplainant about a Rule 586 disposition, nor did I tell the Complainant I worked out a deal with the prosecutor.

Doherty Affidavit at ¶¶ 6-10. Mr. Doherty further explained, "After speaking with Mr. Harris, I approached [ADA] Farraye, and inquired about a 586 disposition or other similar resolution to the case based upon my conversation with the [C]omplainant. I told him that the [C]omplainant had asked for money for pain and suffering and medical expenses." *Id.* at ¶ 11.

On March 1, 2022, the Court scheduled a hearing on defendant's Post-Sentence Motion. On April 4, 2022, Ms. Fruchter filed a motion requesting that the Defender Association of Philadelphia be permitted to withdraw as counsel for defendant based on a conflict of interest. On April 8, 2022, the Court granted Ms. Fruchter's motion to withdraw and appointed Mr. Derek A. Steenson to represent defendant. The hearing on defendant's Post-Sentence Motion was held on May 20, 2022, during which the parties chose not to present any additional evidence. N.T. 5/20/22 at 4-5. On that same date, the Court denied defendant's Post-Sentence Motion.

III. DISCUSSION

On appeal, defendant contends that the Court's denial of defendant's Post-Sentence Motion was in error because (1) the Commonwealth's failure to disclose the above-described statement of Mr. Thompson prior to trial resulted in a *Brady* violation, and (2) Mr. Thompson's statement constituted after-discovered evidence. Statement of Errors at ¶¶ 1-2. Both of defendant's claims lack merit.

A. *Brady Violation*

In *Brady*, the United States Supreme Court held that "[d]ue process is offended when the prosecution withholds evidence favorable to the accused where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Commonwealth v. Natividad*, 650 Pa. 328, 352 (Pa. 2019) (citing *Brady*, 373 U.S. at 87). In order to establish a *Brady* violation, "a defendant has the burden to prove that (1) the evidence at issue was favorable to the accused, either because it is exculpatory or because it impeaches; (2) the prosecution has suppressed the evidence, either willfully or inadvertently; and (3) the evidence was material, meaning that prejudice must have ensued." *Commonwealth v. Bagnall*, 235 A.3d

1075, 1086 (Pa. 2020) (citations omitted). As explained below, defendant fails to meet his burden of proving any of the three elements of a *Brady* violation in this case.

The alleged *Brady* material at issue here consists of Mr. Thompson's pre-trial statement to ADA Farraye, made minutes before trial, indicating that defense counsel had just offered Mr. Thompson "$2,000 for pain and suffering so that the case could be taken care of." N.T. 2/18/22 at 20-21. Defendant contends that Mr. Thompson's statement to ADA Farraye was not only false, but that it amounted to a crime, namely, a knowing act of making a false report to law enforcement authorities, in violation of 18 Pa.C.S. § 4906. Post-Sentence Motion at ¶¶ 7-8. As such, defendant argues that the statement should have been disclosed by the Commonwealth as impeachment material of Mr. Thompson, who was the Commonwealth's primary witness. However, in view of the record and circumstances here, defendant's characterization of Mr. Thompson's statement to ADA Farraye as a purposeful lie, let alone a crime, is speculative and overstates what seems more likely to have been a misunderstanding.

Preliminarily, it bears noting that, at trial, Mr. Thompson occasionally had difficulty understanding some of the questions posed to him and communicating some of his answers in a clear fashion, as reflected in the notes of his trial testimony. N.T. 12/7/21 at 10-31. That is to say, communication issues may have contributed to any misunderstanding had by Mr. Thompson regarding his brief conversation with Mr. Doherty. Given the content and timing of Mr. Doherty's conversation with Mr. Thompson, it also was not altogether unreasonable for Mr. Thompson to have interpreted Mr. Doherty's questions as part of an effort to explore resolving the case through some sort of financial agreement. After Mr. Thompson agreed to speak with him, Mr. Doherty asked, "What is your goal for the case? How do you feel aggrieved?" Doherty Affidavit at ¶ 8. Mr. Thompson answered in part that "all he wanted from the case was $2,000 for pain and suffering

and medical expenses." *Id.* at ¶ 9. At that point, Mr. Doherty thanked Mr. Thompson and excused himself to speak with defendant. *Id.* at ¶ 10. He asked no further questions. It seems plausible that Mr. Thompson walked away from such an exchange with a belief that Mr. Doherty and defendant were contemplating a resolution that included compensation to Mr. Thompson.

Even if Mr. Thompson was wrong in stating that Mr. Doherty had offered him a direct payment to resolve the case, the record shows that he would have been right to think that Mr. Doherty was seeking to resolve the case in a way that would have provided financial satisfaction to Mr. Thompson. Indeed, right after speaking with Mr. Thompson and defendant, Mr. Doherty approached ADA Farraye and, in Mr. Doherty's own words, "inquired about a [Rule] 586 disposition or other similar resolution to the case based upon my conversation with the [C]omplainant." *Id.* at ¶ 11. Dismissal under Rule 586 of the Pennsylvania Rules of Criminal Procedure would have required in part a showing that "satisfaction has been made to the aggrieved person or there is an agreement that satisfaction will be made to the aggrieved person."[4] Pa.R.Crim.P. 586(3). Thus, Mr. Doherty was in fact seeking to have the case dismissed in a manner that would have required defendant to make payments resulting in satisfaction to Mr. Thompson, the aggrieved person. This appears to be consistent with what Mr. Thompson believed was happening after his conversation with Mr. Doherty.

Defendant's claim that Mr. Thompson's statement to Mr. Farraye was a purposeful lie constituting a criminal act, as opposed to a misunderstanding by a layperson unversed in criminal procedure, is not supported by the record or common sense. For Mr. Thompson to have committed

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[4] It bears noting that dismissal through Rule 586 is available only "[w]hen a defendant is charged with an offense which is not alleged to have been committed by force or violence or threat thereof." Pa.R.Crim.P. 586. In this case, even if there had been an agreement to make satisfaction to Mr. Thompson, it appears that dismissal under Rule 586 would have been improper, given that defendant had been charged with violent offenses.

the crime of making a false report to law enforcement authorities, as suggested by defendant, Mr. Thompson would have had to "knowingly [give] false information" to ADA Farraye with "intent to implicate" Mr. Doherty. 18 Pa.C.S. § 4906. No evidence in the record suggests that Mr. Thompson had any reason to lie about his conversation with Mr. Doherty or to implicate him in a crime. It seems far more likely that Mr. Thompson raised with Mr. Farraye what he incorrectly believed was an offer of payment by Mr. Doherty because Mr. Thompson wanted compensation for his injuries and wanted to know whether any agreement on compensation had been reached. In any event, defendant's speculative interpretation of Mr. Thompson's statement is insufficient to meet defendant's burden of establishing that the statement constituted impeachment material.

Moreover, neither of the two remaining components of a *Brady* violation have been established here. Even if Mr. Thompson had in fact knowingly provided a false statement to ADA Farraye, nothing in the record suggests that the Commonwealth had any information prior to trial revealing that Mr. Thompson's statement to ADA Farraye was untrue, let alone a purposeful lie. Accordingly, defendant cannot show that the Commonwealth willfully or inadvertently suppressed evidence. *See Commonwealth v. King*, 271 A.3d 437, 451 (Pa. Super. 2021) ("Because [a trial witness's] identity as an informant was unknown and kept from the Commonwealth, we cannot conclude that the Commonwealth willfully or inadvertently suppressed evidence of [the witness's] identity in violation of *Brady*.").

Finally, defendant's claim also fails because the alleged impeachment evidence was not material. "[I]mpeachment evidence is material, and thus subject to obligatory disclosure, if there is a reasonable probability that had it been disclosed the outcome of the proceedings would have been different." *Commonwealth v. Strong*, 563 Pa. 455, 468 (2000) (citations omitted). Here, even if Mr. Thompson's statement had been disclosed prior to trial and used by the defense for

purposes of impeachment, there is not a reasonable probability that the outcome would have been any different. The other evidence in the case, including defendant's own testimony, established beyond a reasonable doubt that defendant repeatedly struck Mr. Thompson in the head with a baseball bat, and that his use of deadly force was not justifiable under the circumstances.

More specifically, defendant himself testified that he hit Mr. Thompson repeatedly with the baseball bat. N.T. 12/7/21 at 54. Photographs of Mr. Thompson taken on the date of the incident clearly established that the bat was used to strike Mr. Thompson in the head, and that his head had been bloodied badly. *Id.* at 17-19; Commonwealth Exhibits C-1A, C-1B, and C-1C. Under the law, the use of such deadly force would have been justified in this case only if defendant had believed that the deadly force was "immediately necessary" to protect himself against death or serious bodily injury. 18 Pa.C.S. § 505. While defendant's testimony regarding the incident suggested that he did have certain concerns about his safety, N.T. 12/7/21 at 53-60, it failed to demonstrate that defendant had reason to believe he was in *immediate* danger of death or seriously bodily injury at the time he began attacking Mr. Thompson with the baseball bat. Indeed, at no point did defendant assert in his testimony that he had come to believe that he had been facing that level of immediate peril. Defendant further acknowledged that he had not seen Mr. Thompson holding any sort of weapon during the incident. *Id.* at 58. In view of all the evidence presented in this case, there is not a reasonable probability that disclosure of Mr. Thompson's statement to ADA Farraye would have changed the outcome of defendant's trial. Thus, the alleged impeachment evidence was not material, and defendant's claim of a *Brady* violation lacks merit.

B. *After-Discovered Evidence*

Defendant also contends that the Court's denial of his Post-Sentence Motion was in error because Mr. Thompson's statement to ADA Farraye constituted after-discovered evidence under

Rule 720(C) of the Pennsylvania Rules of Criminal Procedure. Statement of Errors at ¶ 2; Post-Sentence Motion at ¶¶ 19-22. To obtain relief under Rule 720(C), a claim of after-discovered evidence must meet the following four-prong test:

> (1) the evidence could not have been obtained before the conclusion of the trial by reasonable diligence; (2) the evidence is not merely corroborative or cumulative; (3) the evidence will not be used solely for purposes of impeachment; and (4) the evidence is of such a nature and character that a different outcome is likely.

Commonwealth v. Heaster, 171 A.3d 268, 273 (Pa. Super. 2017) (quoting *Commonwealth v. Rivera*, 939 A.2d 355, 359 (Pa. Super. 2017). For a new trial to be warranted under Rule 720(C), a defendant must show at an evidentiary hearing by a preponderance of the evidence that each of the above factors has been met.[5] *Rivera*, 929 A.2d at 359.

Defendant cannot satisfy the third and fourth prongs of the test for after-discovered evidence. As defendant acknowledged in his Post-Sentence Motion, the evidence of Mr. Thompson's statement would be used for purposes of impeachment. Post-Sentence Motion at ¶ 21. It is obvious that such evidence could serve no other purpose, and for that reason, defendant cannot meet the test's third prong. Moreover, for the same reasons that the impeachment evidence would not be "material" under *Brady*, *see supra* Section III.A, the evidence is not of such a nature and character that a different outcome would be likely. Thus, the test's fourth prong also cannot be met. For these reasons, relief under Rule 720(C) is unwarranted.

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[5] The only evidence submitted by defendant in support of his Post-Sentence Motion was the affidavit of Mr. Doherty and a letter requesting discovery, attached as Exhibits A and B to the motion, respectively. Defendant offered no further evidence at the hearing on the motion. N.T. 5/20/22 at 4.

IV. CONCLUSION

For all the reasons set forth above, the judgment of sentence should be affirmed.

BY THE COURT:

ANTHONY G. KYRIAKAKIS, J.