ATTORNEYS FOR APPELLANT

Theodore E. Rokita
Attorney General of Indiana

Jodi Kathryn Stein
Supervising Deputy Attorney General
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Matthew J. McGovern
Fishers, Indiana

IN THE
COURT OF APPEALS OF INDIANA

State of Indiana,
Appellant-Plaintiff

v.

Elijah I. Parchman,
Appellee-Defendant.

December 22, 2022

Court of Appeals Case No.
21A-CR-447

Appeal from the Vanderburgh Circuit Court

The Honorable David D. Kiely, Judge

Trial Court Cause No.
82C01-1904-MR-2504

Pyle, Judge.

Statement of the Case

[1] The State appeals the trial court's grant of Elijah Parchman's ("Parchman") motion to correct error requesting a new trial after a jury had convicted him of murder[1] and

[1] IND. CODE § 35-42-1-1.

attempted murder.[2] The trial court granted Parchman's motion after concluding that Parchman had been denied a fair trial because the State had violated *Brady v. Maryland*, 373 U.S. 83 (1963) when it failed to disclose the juvenile delinquency history of one of its witnesses. The State argues that the trial court abused its discretion in granting Parchman's motion because the evidence that the State failed to disclose was not material. Concluding that the trial court abused its discretion in granting Parchman's motion, we reverse the trial court's judgment.

[2] We reverse.

Issue

> Whether the trial court abused its discretion when it granted Parchman's motion to correct error requesting a new trial.

Facts

[3] The undisputed facts reveal that at approximately 9:45 p.m. on April 5, 2019, Parchman shot and killed Bobby Minor ("Bobby") and shot and wounded Bobby's brother, Ikeem Minor ("Minor"). Parchman immediately called 911 and reported that he had shot the men.

[4] On April 9, 2019, the State charged Parchman with murder for knowingly or intentionally killing Bobby and attempted murder for attempting to kill Minor.[3] Two days later, Parchman filed a motion to produce. In this motion, Parchman requested

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[2] I.C. §§ 35-42-1-1 and 35-41-5-1. Parchman admitted that he had used a firearm in the commission of the offenses. *See* I.C. § 35-50-2-11.

[3] The State also charged Parchman with additional offenses that were dismissed before trial.

that the State provide him with "[a] copy of the criminal and/or juvenile delinquency history and record known by the State of Indiana, or available to the State of Indiana for each and every State's witness[.]" (App. Vol. 2 at 218-19). Pursuant to this request, the State provided Parchman with a summary of Minor's adult criminal history, which did not include any impeachable offenses. However, the State did not provide Parchman with a summary of Minor's juvenile delinquency history.

[5] At Parchman's two-day jury trial in November 2020, Minor testified that on April 5, 2019, he, Bobby, and Michael Green ("Green") had stopped at a convenience store to purchase beverages. Minor had also purchased lottery tickets. According to Minor, while he had been "playing [his] lottery tickets[,]" Bobby and Green had walked back to the car. (Tr. Vol. 2 at 39). When Minor had exited the store, he had heard Bobby "yelling across the parking lot[.]" (Tr. Vol. 2 at 97). Minor testified that he had turned and had seen a group of five to six men standing in an adjacent parking lot by an apartment building. As Minor, Bobby, and Green had walked towards the group of men, Bobby and the men had "kept exchanging words." (Tr. Vol. 2 at 100). Minor testified that he could not hear what the men had been saying but that he had heard Bobby say, "[t]hey got me fucked up." (Tr. Vol. 2 at 100). According to Minor, Bobby had meant that the men had not known him. Bobby, who was from Chicago, yelled "Ya'll don't know me, I'm not from here." (Tr. Vol. 2 at 101). Minor further testified that as he, Bobby, and Green had approached the group of men, someone in the group had begun shooting at them.

[6] When asked how far he, Bobby, and Green had been from the group of men when the shots had been fired, Minor responded as follows: "Couldn't tell you. I don't

remember. It was like, I wasn't close. I still couldn't see who it was." (Tr. Vol. 2 at 113). When the State showed him an aerial photograph of the area, Minor was able to mark with an X the approximate spot where he, Bobby, and Green had been standing when Parchman had shot at them. (State's Ex. 2). Minor also testified that following the shooting, Minor had run back to the convenience store, where he had realized that he had been shot. The State admitted into evidence a medical report revealing that Minor had been shot in the buttock and in the hand. Minor also testified that when he had turned around, he had seen Bobby "crawling back to the car." (Tr. Vol. 2 at 102). Minor explained that he had driven Bobby to the hospital, where Bobby had died from a gunshot wound. Minor further testified that he, Bobby, and Green had not been carrying guns that night. Minor also testified that he had not seen Green since the night of the shooting and did not know how to contact him.

[7] Evansville Crime Scene Detective Phillip Luecke ("Detective Luecke") testified that he had responded to the scene. Detective Luecke further testified that he had noticed a cluster of seven shell casings in the parking lot adjacent to the apartment building. According to Detective Luecke, the shell casings indicated the location from where the shots had been fired. Detective Luecke also testified that he had found two copper jackets in the parking lot. According to Detective Luecke, the copper jackets "denote[d] where something [had been] hit[.]" (Tr. Vol. 2 at 30). When the State showed him a clean copy of the same aerial photograph that it had shown to Minor, Detective Luecke marked with a red dot the approximate spot where he had found the copper jackets. (State's Ex. 29). Detective Luecke placed the red dot in the same

area of the photograph that Minor had placed the X. Detective Luecke further testified that he had measured the distance between the shell casings and the copper jackets, and the distance had been 117 feet. In addition, Detective Luecke testified that he had noticed a blood trail that had begun near the copper jackets and had led to the convenience store.

[8] Evansville Police Department Detective Jackie Lowe ("Detective Lowe") testified that he had attempted to locate witnesses to the shooting but had not been able to find any. Specifically, Detective Lowe testified that he had not been able to locate any of the men that had been standing in the group with Parchman at the time of the shooting. Detective Lowe had also attempted to locate Green in Chicago but had been unable to find him.

[9] In addition, forensic pathologist Dr. Christopher Kiefer ("Dr. Kiefer"), who had conducted Bobby's autopsy, testified that Bobby's cause of death was a gunshot wound. According to Dr. Kiefer, the gunshot had entered Bobby's buttock on the back side of his body, passed through and severed Bobby's iliac artery, and exited Bobby's body near his groin.

[10] Lastly, Parchman testified that he had shot the men in self-defense. Parchman specifically testified that he had taken his gun with him when he had gone outside to smoke a cigarette. Parchman further testified that Minor, Bobby, and Green had approached him in an aggressive manner and that he had told them to stop because they had not belonged there. Parchman explained that the men had not had the right to walk aggressively towards him. Parchman further testified that despite his verbal

warning, the three men had continued to approach him. According to Parchman, as the men had approached him, he believed one of the men had reached into his waistband. Although Parchman had not seen a gun, Parchman testified that the man's perceived act of reaching into his waistband had led Parchman to fear for his life because he had not known if the man was going to shoot him. Parchman explained that he had twice discharged his gun at the ground. However, the men had approached him even more quickly. According to Parchman, when the three men had been what he believed to be five to ten feet away from him, he had shot at them while they were facing him. Parchman testified that he had stopped shooting when the men had turned around and run. According to Parchman, after he had shot at the men, he had telephoned the police to report his involvement in the shooting.

[11] During closing argument, the State pointed out that Parchman had admitted that he had shot Bobby and Minor and that the "big dispute of this case [was] where it [had gone] down." (App. Vol. 2 at 212). The State further argued as follows:

> Detective Luecke, in another important part of his testimony, you saw him marking on these [photographs]. You guys have seen these [photographs]. He went back and he measured these crime scenes. He measured from where the shell casings were found to the red dot where he found [the copper jackets][.] From the shell casings to the red dot, a hundred and seventeen feet[.] The distances that [Parchman] testified to that these incidents occurred cannot be true. They cannot be true[.] It does not add up. It does not match any of the physical evidence you have seen. It doesn't match anything that was introduced[.] It's interesting to wonder then what does match. Ikeem Minor testified this morning. His testimony matches the physical evidence. It matches the measurements. He marked on [a

> different copy of the same photograph]. You'll see his [X] where he said he was standing along side his brother when the shots started ringing out[.] Look at these two [photographs], compare them. They're remarkably similar. Detective Luecke was not here when [Minor] testified or vice versa. Their testimony was independent. It matches the physical evidence.

(App. Vol. 2 at 207-08). The State further pointed out that both Minor and Bobby had been shot in the back on their buttocks. According to the State, "there [was] no way that [those injuries] fit with what [Parchman had] said." (App. Vol. 2 at 212).

[12] A jury convicted Parchman of both offenses, and Parchman admitted that he had used a firearm when he had committed the offenses. Following the jury's verdict, but before the sentencing hearing, the trial court conducted its own research and discovered that Minor had a 2008 juvenile delinquency adjudication for committing what would have been Class B felony burglary if committed by an adult. Minor was fifteen years old when he had committed the offense. The disposition of this adjudication had been completed in March 2010, which was ten years and seven months before Minor testified at Parchman's trial. During the scheduled sentencing hearing, the trial court appointed Parchman a new attorney to investigate the possibility of filing a motion to correct error based on a *Brady* violation resulting from the State's failure to disclose to Parchman Minor's 2008 juvenile delinquency adjudication. The trial court rescheduled the sentencing hearing.

[13] In January 2020, Parchman filed a motion to vacate the sentencing hearing, which the trial court granted, and a motion to correct error asking the trial court to grant him a new trial. In its response, the State acknowledged that it had inadvertently

suppressed Minor's 2008 juvenile delinquency adjudication. However, the State argued that Parchman had not been prejudiced by this inadvertent suppression.

[14] The trial court held a hearing on Parchman's motion in February 2021. At the hearing, Parchman argued that "this case boiled down to self-defense and so, it became [Minor's] credibility versus Elijah Parchman's credibility. The jury ultimately found that [Minor] was credible and convicted Mr. Parchman as charged." (Motion to Correct Error Hearing ("MCE Hearing") Tr. Vol. 2 at 4). Therefore, according to Parchman, he had been prejudiced by the State's failure to disclose Minor's 2008 juvenile delinquency adjudication because he had been denied the opportunity to impeach Minor's credibility.

[15] The State responded that "[t]he real story was Elijah Parchman shooting people from over a hundred feet away." (MCE Hearing Tr. Vol. 2 at 7). The State further argued that the "things that Ikeem Minor testified to were proven by other facts[]" and that Minor's juvenile delinquency adjudication "would not have made a difference to this jury." (MCE Hearing Tr. Vol. 2 at 8). Rather, according to the State, it was Parchman's "own dubiously incredible testimony that he shot them from a close range, that it was nowhere near a hundred feet away [that had] failed him." (MCE Hearing Tr. Vol. 2 at 9). Citing Indiana Evidence Rule 609, the State also argued that Minor's 2008 juvenile delinquency adjudication would not have been admissible because it was more than ten years old.

[16] Without discussing Evidence Rule 609 and its applicability to the case, the trial court issued a written order granting Parchman a new trial.[4] In this order, the trial court specifically found that Parchman had been "denied a fair trial due to the State's failure to provide impeachment evidence, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963)." (App. Vol. 3 at 139)

[17] The State now appeals.

Decision

[18] The State argues that the trial court abused its discretion in granting Parchman's motion because the evidence that the State failed to disclose was not material. We agree.

[19] A trial court has discretion to correct errors and to grant new trials. *Gregor v. State*, 646 N.E.2d 52, 53 (Ind. Ct. App. 1994). We will reverse only for an abuse of discretion. *Id.* "An abuse of discretion will be found when the trial court's action is against the logic and effect of the facts and circumstances before it and the inferences which may be drawn therefrom." *Id.* "An abuse of discretion also results from a trial court's decision that is without reason or is based upon impermissible reasons or considerations." *Id.*

[20] In *Brady*, the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the

[4] The trial court also did not discuss Evidence Rule 609 at the hearing on Parchman's motion.

good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87. In *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999), the United States Supreme Court summarized the three requirements of a *Brady* violation as follows: (1) the evidence at issue must be favorable to the accused, either because the evidence is exculpatory or because it is impeaching; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) prejudice must have ensued.

[21] Here, the State acknowledges that Minor's juvenile delinquency history was impeachment evidence that the State had inadvertently suppressed. Thus, this case turns on whether the nondisclosure was prejudicial to Parchman, i.e., whether the suppressed evidence was material.

[22] Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. *Carroll v. State*, 740 N.E.2d 1225, 1229 (Ind. Ct. App. 2000) (citing *United States v. Bagley*, 473 U.S. 667, 676 (1985)), *trans. denied*. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id*. "In proving materiality, it is not necessary for the defendant to show that 'after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict.'" *Carroll*, 740 N.E.2d at 1229 (quoting *Kyles v. Whitley*, 514 U.S. 419, 434-35 (1995)). "Rather, the defendant must show that the 'favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.'" *Carroll*, 740 N.E.2d at 1230 (quoting *Kyles*, 514 U.S. at 435).

[23] We addressed the materiality of a witness' ten-year-old theft conviction in *McKnight v. State*, 1 N.E.3d 193 (Ind. Ct. App. 2013). There, the State charged McKnight with Class A felony dealing in cocaine weighing three grams or more after he sold cocaine to the witness, who had been wired with a recording device. A police officer had also provided the witness with $500 to pay for the cocaine and to cover a debt that the witness owed to McKnight. After a jury had convicted McKnight as charged, he filed a petition for post-conviction relief. In this petition, McKnight argued that the State had committed a *Brady* violation when it had withheld impeaching information regarding the fact that the witness had a ten-year-old theft conviction. Assuming that the State had failed to disclose the witness' prior conviction to McKnight, we determined that in light of all the evidence presented at trial, the witness' ten-year-old theft conviction was "negligible, at best." *Id.* Specifically, our review of the evidence revealed that the witness' testimony was cumulative of the testimony of undercover officers as well as the audio recording of the controlled buy. Under those circumstances, we concluded that McKnight had not demonstrated a reasonable probability that the outcome of his trial would have been different had trial counsel known about the theft conviction and attempted to impeach the witness with that conviction. *Id*. Accordingly, we concluded that McKnight's *Brady* claim failed. *Id*.

[24] Here, as in *McKnight*, in light of all the evidence presented at trial, Minor's more than ten-year-old juvenile delinquency adjudication is negligible, at best. Specifically, our review of the evidence reveals that Minor's testimony was cumulative of Detective Luecke's testimony that Parchman was standing over one-hundred feet away from the victims when he began shooting at them. Minor's testimony was also cumulative

of Dr. Kiefer's testimony that Bobby had been shot on his back side and hospital records that revealed Minor had also been shot on his back side. Based on these specific and particular facts, we conclude, as we did in *McKnight*, that Parchman has not demonstrated a reasonable probability that the outcome of his trial would have been different had trial counsel known about Minor's juvenile delinquency adjudication and attempted to impeach him with questions about that remote adjudication. *See id*. Accordingly, Parchman's *Brady* claim fails. *See also Reid v. State*, 984 N.E.2d 1264, 1271-72 (Ind. Ct. App. 2013) (concluding that the impeaching value of a twenty-four-year-old robbery conviction was negligible in light of all the evidence presented), *trans. denied*; *Carroll*, 740 N.E.2d at 1230 (concluding that the impeaching value of six-year-old misdemeanor conviction for false informing was negligible in light of all the evidence presented). Because Parchman's *Brady* claim fails, the trial court abused its discretion when it granted his motion to correct error requesting a new trial.[5]

[5] The State also argues that Minor's 2008 juvenile delinquency adjudication for committing what would have been Class B felony burglary if committed by an adult is not material for *Brady* purposes because it was not admissible. *See United States v. Ranney*, 719 F.2d 1183, 1190 (1st Cir. 1983) (explaining that "[i]nadmissible evidence is by definition not material [for *Brady* purposes], because it never would have reached the jury and therefore could not have affected the trial outcome.") Citing Evidence Rule 609, the State argues that the delinquency adjudication was not admissible because it was more than ten years old. The State also argues that the trial court failed to engage in a required balancing test on the record before determining that the delinquency adjudication would have been admissible. *See Giles v. State*, 699 N.E.2d 294, 299 (Ind. Ct. App. 1998) (explaining that a "trial court *must* engage in a balancing test on the record before the admission of a stale conviction is permitted.") (emphasis in the original). However, we need not address this argument because we have already found that Minor was not prejudiced by the State's inadvertent failure to disclose Minor's 2008 juvenile delinquency adjudication.

[25] Reversed.[6]

May, J., and Brown, J., concur.

[6] We note that the trial court was rightfully displeased upon discovering that the State had failed to comply with Parchman's discovery request, and we disapprove of the State's failure to provide Parchman with Minor's complete criminal history. Indeed, our Indiana Supreme Court "takes a dim view" of the State's failure to comply with a proper discovery request. *Mers v. State*, 496 N.E.2d 75,83 (Ind. 1986). We further note that criminal history information is the type of information that is almost exclusively within the State's control. "The availability of information is not measured in terms of whether the information is easy or difficult to obtain but by whether the information is in the possession of some arm of the State." *Carroll*, 740 N.E.2d at 1229. (citations and quotation marks omitted). Further, we remind the State that whether evidence is prejudicial or inadmissible is within the discretion of the courts, not the State.