

Question MPT – July 2018 – Selected Answer 1

I. The motion for a new trial should be denied because the evidence of Reed recanting her statements was neither favorable to the defendant nor material, and thus failed to meet the three requirements that give rise to a Brady duty to disclose.

(i) Hale's motion for a new trial should be denied because the prosecution committed no Brady violation by failing to produce the evidence of Reed's recanted statements. This is because that evidence was neither favorable to the defendant nor material, and thus failed to meet two of the three requirements that give rise to a Brady violation.

Brady v. Maryland requires, under the Due Process Clause of the Fifth and Fourteenth Amendments, that the prosecution not suppress any exculpatory evidence. Under Brady, the government must provide the defendant with all material exculpatory evidence, regardless of whether the defendant requests it. There are three required components of a Brady violation: (1) the evidence must be favorable to the defendant; (2) the government must have suppressed the evidence, either willfully or unintentionally; and (3) the evidence must be material. (Strickler v. Greene) If any of these three elements is missing, a failure to disclose evidence will not violate Brady.

The first element of a Brady violation requires that the evidence suppressed be favorable to the defendant. Evidence is favorable to a defendant where it would have benefitted his case, such as by making it less likely that a fact-finder would believe that he had committed the crime. (Haddon v. State) In this case, the evidence of Reed's testimony is not favorable to Hale's case, because it would not encourage a fact-finder to believe in his innocence. This is because Reed's conflicting testimony strongly suggests that she is afraid of her husband, that she was threatened by him in order to encourage her silence, and that he only married her to prevent her testimony from being presented at trial. At most, Reed's statements would suggest to a fact-finder that Hale is seeking to prevent her testimony from being presented, and is seeking to cover up his own wrongdoing by threatening and coercing his spouse. Additionally, her marriage to Hale and prior romantic relationship with him might additionally present some evidence of potential bias on her part in favor of Hale, which would lead a reasonable jury to find her statements less credible, and thus be more skeptical of Hale's innocence, which would not make a finding of guilt any less likely. Therefore, the evidence of Reed's statements is not favorable to the defendant, and fails to satisfy the first requirement of a Brady violation.

The second element of a Brady violation requires that the government have suppressed the evidence. However, it does not matter whether a suppression was intentional or inadvertent; a Brady violation occurs if the exculpatory evidence is suppressed. (Haddon v. State) Thus, Hale attempts to argue that because the evidence of Reed's statements was not disclosed, an automatic violation of Brady occurred, regardless of whether the suppression was intentional or inadvertent. However, this is incorrect, because the other two required elements of a Brady duty--favorability and materiality--are not present in this case with regard to Reed's statements. Therefore, no violation of a Brady duty occurred, because all three elements must be present for the duty of disclosure to arise and be prone to violation.

The final element of a Brady violation requires that evidence be material. Evidence is material if its disclosure would have had a reasonable probability of affecting the outcome of the case by leading to a different result. (*Haddon v. State*) For the same reasons discussed above regarding the first Brady requirement of favorability, the evidence of Reed's statements would not have had a reasonable probability of affecting the outcome of the case here. At trial, Hale was convicted by the jury. The evidence of Reed's statements would not be likely to alter that outcome because, as discussed above, the evidence casts no doubt on Hale's guilt because of the significant impression that her testimony is tainted with bias, coercion, and threats by Hale. Thus, no reasonable jury would be likely to find the evidence supportive of a finding of innocence, and it would not have had any reasonable probability of changing the outcome of the case. Rather, the jury would still be likely to have found Hale guilty, because the evidence of potential threats and coercion he committed against Reed does not suggest innocence, but rather strongly suggests that he is attempting to conceal his guilt.

(ii) Hale's motion for a new trial should be denied because Franklin Rule of Criminal Procedure 33 only permits the granting of a new trial if a defendant was prejudiced by the prosecution's violation of a state or federal constitutional provision, statute, or rule at the prior trial. Because the prosecution did not violate Brady by failing to disclose the evidence of Reed's statements (see (i), *supra*), Franklin Rule of Criminal Procedure 33 does not permit the granting of a new trial in this case, and the defendant's motion for a new trial must therefore be dismissed.

In *Haddon v. State*, the Franklin Supreme Court clarified that prejudice will occur where evidence suppressed satisfies the three requirements that give rise to a Brady duty to disclose. In this case, the statements made by Reed failed to satisfy two of the three requirements that create a violation under Brady (see (i), *supra*), including the materiality requirement that led the court to find the existence of prejudice in *Haddon*. In this case, no such materiality of the evidence occurred, because the evidence of Reed's statements would not have had a reasonable probability of affecting the outcome of the case or leading to a different result (*Haddon*) (see also (i), *supra*). Therefore, because no prejudice existed regarding the evidence of Reed's statements, and no violation of Brady or other law occurred when the prosecution failed to produce that evidence, Hale's motion for a new trial must be dismissed, because Franklin Rule of Criminal Procedure 33 only permits granting a motion for new trial if the defendant was prejudiced by a violation of law made by the prosecution.

II. The motion for new trial should be denied because the government agency in possession of the evidence of Trumbull's statements--the ambulance service--was not involved in the investigation or prosecution of the defendant, and thus no Brady duty to disclose the evidence existed.

(i) Hale's motion for a new trial should be denied because no Brady violation occurred from the failure to produce Trumbull's statements. This is because the government agency in possession of the evidence of Trumbull's statements--the ambulance service--was not involved in the investigation or prosecution of Hale, and thus had no Brady duty to disclose.

In *State v. Capp*, the Franklin Court of Appeal denied a defendant's motion to dismiss alleging that the state failed to comply with its responsibilities under *Brady v. Maryland* because the hospital in possession of the records was not involved in the investigation or prosecution of the defendant, and was therefore not required to disclose the information under *Brady*. In that case, the court cited *Kyles v. Whitley*, an earlier case providing that suppression of evidence or records in violation of *Brady* will only occur where a government agency is in possession of the evidence, and was involved in the investigation or prosecution of the defendant. In this case, the prosecution itself did not possess the evidence of Trumbull's statements. Rather, the ambulance service that took Trumbull from the scene was in possession of that information, as evidenced by the testimony of Gil Womack. However, the ambulance service was not involved in prosecuting or investigating the defendant; rather, it merely transported Trumbull to the hospital, and the court held in *Capp* that the policy of encouraging hospitals and similar health providers to serve their purpose precludes the imposition of any *Brady* duty to disclose where such agencies were not involved in prosecuting or investigating the case.

Additionally, the court clarified in *State v. Capp* that a prosecutor is under no obligation to furnish a defendant with *Brady* material if the material is fully available to the defense through the exercise of due diligence, such as by subpoena or other similar means. Thus, in this case, no *Brady* duty to disclose even existed, because the testimony of Gil Womack suggests that had the defendant exercised reasonable diligence in seeking to subpoena or otherwise speak to him before trial, he could have obtained the information sought.

(ii) Hale's motion for a new trial should be denied because Franklin Rule of Criminal Procedure 33 only permits the granting of a new trial if a defendant was prejudiced by the prosecution's violation of a state or federal constitutional provision, statute, or rule at the prior trial. As the court stated in *Haddon*, prejudice to a defendant requires that a *Brady* violation have occurred. Therefore, because the prosecution did not violate *Brady* by failing to disclose the evidence of Trumbull's statements due to the fact that it was not in possession of the statements, and the fact that the agency in possession of those statements (the ambulance service) had no *Brady* duty to disclose (see (i), *supra*), Franklin Rule of Criminal Procedure 33 does not permit the granting of a new trial in this case, and the defendant's motion for a new trial must therefore be dismissed.

III. The motion for new trial should be denied because there is sufficient evidence to determine that Hale married Reed solely for the purpose of being able to make her unavailable to testify at trial, and therefore wrongfully caused her unavailability under Franklin Rule of Evidence 804(b)(6).

(i) Hale's motion for a new trial should be denied because there is sufficient evidence to determine that Hale married Reed solely to make her unavailable to testify, and therefore wrongfully caused her unavailability under Franklin Rule of Evidence 804(b)(6). Franklin Rule of Evidence 804(b)(6) operates to allow admissibility of statements otherwise excluded by the rule of hearsay where they are offered against a party who wrongfully and intentionally caused a declarant's unavailability as a witness. In *State v. Preston*, the Franklin Court of Appeal held that a party wrongfully and intentionally causes a declarant's unavailability by intentionally marrying them solely for the purpose of prohibiting their testimony at trial. In that case, the court reversed a defendant's conviction for theft where the defendant demonstrated that the trial court's

admission of evidence under a hearsay exception was erroneous. In that case, the defendant attempted to assert spousal privilege in order to suppress the introduction of his wife's testimony at trial. The prosecution successfully countered his objections by applying Franklin Rule of Evidence 804(b)(6), which provides an exception to the hearsay rule (Rule of Evidence 804) allowing admission of hearsay statements "offered against a party that wrongfully caused . . . the declarant's unavailability as a witness." The prosecution's attack was based on the idea that the defendant committed wrongful conduct by marrying his spouse solely to gain access to the spousal privilege against testifying. However, the Franklin Court of Appeal instead held that because the defendant and wife were already engaged to be married at the time when the crime was committed and had set a date, he did not marry solely for the purpose of invoking the spousal privilege, and thus committed no wrongful act that would enable admission of the statements under Rule 804(b)(6).

Although no evidence of wrongful conduct by marriage occurred in Preston, evidence of wrongful conduct by Hale in marrying Reed is present in this case. Unlike in Preston, where the marriage was planned and intended before the crime was committed and before trial, there is significant evidence suggesting that Hale solely proposed to Reed in this case to prevent her from being able to testify by making her unavailable. Such evidence includes the temporal proximity within which he proposed to her after committing the crime, as well as the fact that he insisted on marrying her quickly before she was submitted to investigatory interviews, and the fact that Reed herself suggested that he had been threatening her and pressuring her into marriage and into not testifying. All of these elements were lacking in Preston, where the court rightfully concluded that no wrongful conduct occurred, and therefore there is substantial evidence of wrongful conduct in this case. Therefore, the evidence of the spousal testimony was admissible under Franklin Rule of Evidence 804(b)(6), because Hale wrongfully and intentionally married Reed solely to make her unavailable at trial.

(ii) Hale's motion for a new trial should be denied because Franklin Rule of Criminal Procedure 33 only permits the granting of a new trial if a defendant was prejudiced by the prosecution's violation of a state or federal constitutional provision, statute, or rule at the prior trial. This requires a violation of law, and for the reasons stated above in (i), no violation of the hearsay rule occurred here, because the testimony of Reed was admissible under Franklin Rule of Evidence 804(b)(6).

Question MPT – July 2018 – Selected Answer 2

I. The Motion for a New Trial should be denied because the statements made to the EMT were not in the possession of the government under Brady v. Maryland.

In *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court established that the prosecution may not suppress any exculpatory evidence from disclosure to the defense. To assess whether a Brady violation has occurred, the Court must consider three components: (1) the evidence must be favorable to the defendant; (2) the government must have suppressed the evidence, either willfully or unintentionally; and (3) the evidence must be material. *Strickler v. Green*, 527 U.S. 263 (1999). In this case, Defendant claims that the government violated Brady by failing to

disclose a statement made by the victim to the emergency medical technician (EMT) during his transportation to the hospital after the shooting.

During his transportation to the hospital after the shooting at issue in this case, the Victim, Bobby Trumbull, made a statement to EMT Gil Womack. Mr. Womack is an emergency medical technician for the Franklin City Ambulance Service, which is part of the City government. Mr. Trumbull made an excited statement to Mr. Womack of "I don't know exactly what happened or who shot me, but that rat Henry Hale thinks I owe him money. This is all his fault. Mr. Womack was not called as a witness during the trial, and the State never disclosed this statement to defense prior to trial.

In analyzing whether a Brady violation occurred, the three-part analysis detailed in *Strickler* must be followed. First, the evidence must be favorable to the defendant. The statement made by Mr. Trumbull is undoubtedly favorable to the Defendant. As with the statement at issue in *Haddon v. State* (Franklin 2012), the statement serves to impeach a favorable prosecution witness. As found by the Supreme Court, such evidence is favorable evidence to the defense. *Id.*, see also *Giglio v. United States*, 405 U.S. 150 (1972). Here, a neutral fact-finder who learned that Mr. Trumbull was unsure of who shot him, in contradiction to his trial testimony that Henry Hale definitively shot him, would be less likely to believe that Hale committed the crime. As such, the first element of Brady is clearly established.

Likewise, the third element of Brady is also clearly established in this case. As held by the Court in *Haddon*, material evidence is evidence that if the jury had been provided with, there is a reasonable probability that the result would have been different. Here, it is likely that had the jury heard that Trumbull had contradicted his own testimony regarding the identity of his assailant, a neutral fact-finder may have found differently than they would otherwise. Accordingly, this element is established under Brady.

However, in this case it is the second element of the test that is at issue. Under Brady, the allegedly suppressed evidence must be in the possession of the government, either with the prosecuting attorney or with the investigating officer, as such possession is imputed to the government. See *State v. Capp*. However, as held by the Court of Appeals in *State v. Capp* (Franklin Ct. of App., 2014), "it would stretch the law too far to charge the government with possession of all records of all government agencies regardless of whether those agencies had any part in the prosecution of the case. If a government agency was not involved in the investigation or prosecution of the defendant, its records are not subject to disclosure under Brady." *Id.* Here, the "records" at issue are the statements made to the EMT during transport. While the EMT is a part of the government agency, the ambulance provider had no part in the investigation or prosecution of the defendant. As such, under *Carr*, the records are not deemed to be in the possession of the government for prosecution purposes and thus not subject to Brady disclosure.

Accordingly, the second element of Brady is not established in this case. Therefore, there are insufficient grounds for a new trial under Rule 33, as there has been no constitutional violation and no resulting prejudice to the Defendant. The Motion for a new trial should be denied.

II. The Motion for a New Trial should be denied because while Ms. Reed's second statement was not disclosed it was not material to the defendant's guilt or innocence.

The second point Defense argues is that the second statement given to Detective Jones by Ms. Reed was not disclosed in violation of Brady. Here, the same three-part analysis detailed above applies, and must be addressed individually.

First, the evidence must be favorable to the Defendant. Clearly, this element is satisfied. As with the contradicting statement in Haddon, the recanting statement of Ms. Reed after the incident is favorable to the Defendant as it will serve to impeach a favorable prosecution witness and thus make a neutral fact-finder less likely to believe that Hale committed the crime. Haddon v. State, see also Giglio. Second, the evidence was clearly in the possession of the government. While the prosecuting attorney, Ms. Beale was not aware of the statement and believed she had the entire case file from the police, it is immaterial whether the suppression was intentional. See Haddon. Further, as the statement was made to, and in the possession of the investigating officer, it is deemed to be in the possession of the prosecuting attorney and subject to Brady disclosure. Accordingly, this element is clearly established by the evidence.

However, under the third element, the analysis fails. Under Brady, the evidence must be material, that is, "whether, had the jury been provided with the evidence, there is a reasonable probability that that the result would have been different." Haddon. Here, the evidence demonstrates that Ms. Reed made her recanting statement to the officer one day after getting married to the defendant, and during her interview stated that "He just told me to tell you that he didn't do it." When asked who "he" was, Ms. Reed shrugged, avoided eye contact and appeared nervous. When pressed if she was afraid of her husband, Ms. Reed shrugged.

Had the jury been presented with this testimony from Detective Jones, there is a reasonable probability that the jury would have believed that Ms. Reed's statements recanting her earlier identification were false, coerced or made with the intent to interfere with the prosecution of her husband. The shortness of time between her marriage and her statement, and her conduct throughout the interview cast a shadow on her statement and would, to a reasonable fact-finder, imply some coercion on the part of the defendant in order to silence her testimony regarding her recollection of the incident. As such, it is as likely as not that the presentation of such evidence would not have resulted in a different result at trial, as the jury would have likely disregarded this recantation due to its coercive undertones.

Accordingly, the third element of the Brady framework fails, and no violation occurred. Therefore, there are insufficient grounds for a new trial under Rule 33, as there has been no constitutional violation and no resulting prejudice to the Defendant. As such, the Motion should be denied.

III. The Motion for a New Trial should be denied because the introduction of Ms. Reed's statement to Detective Jones did not violate Rule 804, as the Defendant wrongfully caused the unavailability of Ms. Reed at trial.

Lastly, Defendant raises the issue of whether the Court should have permitted the statement made by Ms. Reed to Detective Jones at the time of the incident regarding her identification of the Defendant as the assailant. Under Rule 804(b)(6), "A statement offered against a party that wrongfully caused - or acquiesced in wrongfully causing - the declarant's unavailability as a witness, and did so intending that result" is not excluded by the rule against hearsay if the declarant is unavailable. Rule 804(a) states that a declarant is considered unavailable if (i) the declarant is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies. Rule 804(a)(1). Under Rule 9-707, a spouse cannot be compelled to testify against their spouse who is a defendant in a criminal trial when the spouses are married at the time the privilege is asserted by the defendant. *Id.*

Here, Ms. Reed was called to testify as a witness for the State. The Defendant asserted the spousal privilege, establishing that the couple were married in August of 2017, prior to trial. The Court exempted the witness, finding that the privilege applied. The State then attempted to enter her statements under Rule 804, asserting that the statements were made against the Defendant who wrongfully caused her unavailability by marrying the declarant. The Court overruled Defendant's objections and permitted the statement into evidence. Defendant now claims the Court was in error.

In *State v. Preston*, the Franklin Court of Appeals addressed this issue. In the case, the defendant's wife was called as a witness and successfully excluded by the defendant under the spousal privilege. The state then attempted to introduce the wife's statement to police under Rule 804, arguing that the act of marrying the declarant prior to trial was wrongful. The trial court allowed the statement into evidence. On appeal, the Court of Appeals reversed.

The Court held that under rule 804, the conduct causing the unavailability must be wrongful. In that case, the Court found that the act of marrying the declarant was not wrongful, as the couple had been engaged to be married at the time of the incident, and that the marriage appeared to have occurred in the normal course of events. *Id.* The Court held that a court's finding of wrongful causation must be rooted in facts establishing that a significant motivation for the defendant's entering in to the marriage was to prevent his or her spouse from testifying. As such, the Court reversed the trial court.

Here, the evidence shows that the incident occurred on June 20, 2017. Ms. Reed testified at trial that she and the Defendant were dating at the time of the incident but that he did not propose until July 25, 2017. She further testified that they married on August 25, 2017. Additionally, Detective Jones testified that at Ms. Reed's second statement, she told him that her husband had told her that she would not have to testify in court because they were now married and that he was going to tell the court to keep out her testimony. Additionally, Ms. Reed stated that "he told me to tell you that he didn't do it" implying that "he" was her husband, Harry Hale. Likewise, it is clear that Ms. Reed was unavailable due to the assertion of the spousal privilege under Rule 9-707 by the Defendant.

Unlike the marriage in *Preston*, the marriage here was clearly done for the purpose of excluding Ms. Reed's testimony under the spousal privilege. Unlike the couple in *Preston*, Ms. Reed was not engaged to Mr. Hale when the incident occurred and it was only after she made a statement to

police that he proposed to her and subsequently married her. Further, only a day after her wedding, she was instructed by the Defendant to recant her statement and tell the officers that Mr. Hale did not commit the crime. As such, there is clear evidence to show that the marriage was not conducted in the normal course of events, as in Preston, but that the marriage was instead intended to preclude Ms. Reed from testifying against the Defendant at his criminal trial.

Accordingly, it is clear from the evidence presented that the Defendant wrongfully caused the unavailability of Ms. Reed at trial by wrongfully marrying her in order to exclude her testimony under the spousal privilege. As such, the statements made by Ms. Reed to the officers are not excluded as hearsay under Rule 804, as they are offered against the party who wrongfully caused the declarant's unavailability at trial.

Therefore, the Court did not err in entering the statements into evidence, and thus there are insufficient grounds to support a new trial under Rule 33 as there is no rule violation and no resulting prejudice to the Defendant. The Court should deny the motion in its entirety.

Question MPT – July 2018 – Selected Answer 3

State Court of Frankling

District Court of Juneau County

State of Franklin,

Plaintiff,

v.

Case No. 17 CF 1204

Henry Hale,

Defendant

STATES RESPONSE TO DEFENDANT'S BRIEF IN SUPPORT OF MOITION FOR NEW TRIAL

ARGUMENT

I. The Prosecution did not Violate Brady v. Maryland by failing to Disclose the Sole Eyewitness's Recantation

In Brady v. Maryland, the United States Supreme Court held that the government cannot suppress evidence that is favorable to the defendant and that is material to either guilt or sentencing. In analyzing whether Brady has been violated, this court must make 3 determinations: (1) whether the evidence in question was favorable to the defendant; (2) whether

it was suppressed by the government; and (3) whether it was material. Brady established the requirement, under the due process of clause of the 5th and 14th amendment, that prosecution may not suppress any exculpatory evidence. Here, the evidence the defendant is challenging is a recantation made by his now wife of her prior identification of the defendant as the shooter. Reed was the only witness to the offense and the only witness that provided detectives with an initial statement.

In her original statement, Ms. Reed stated that she had been sitting on her balcony above the courtyard in the apartment complex watching a video on her computer. She further stated that she saw two men yelling at each other and recognized one of them as the defendant. She then heard a shot and saw the defendant fleeing the scene. This statement was given to Detective Lee on the date of the offense. On a later date, Reed went to the police department the day after she married the defendant and told them she didn't know who was in the courtyard and didn't know why she lied to Detective Lee. She was asked to provide any additional information, and she replied that "he just told me to tell you he didn't do it." When she was asked who she shrugged and did not respond.

First, it must be determined whether or not the evidence was favorable to the defendant. *Haddon v. State*. Evidence which will serve to impeach a prosecution witness is "favorable evidence". *Goglio v. United States*. Here, the recantation was substantially different from Reed's original statement and could be served to impeach her. This statement would be favorable to the defendant in that it recanted a prior identification made by the sole witness to the offense. It would have benefited the defendant's case as the defense has been able to cross examine on the statement.

Next, it must be determined whether the government suppressed the evidence. The prosecution's office has an "open file" policy where it provides everything to defense counsel, even if not required to do so by the Rules of Criminal Procedure. Here, the statement was taken by a detective, however the detective left on vacation and left the statement to be given to the prosecutor by another detective. This never happened and the prosecution never received this information until after the trial. The withholding of this statement was not intentional. Under Brady, however, it does not matter if whether the suppression was intentional. In *State v Capp*, it was held that if the evidence is in the possession of the investigating police department the evidence will be deemed to be in the possession of the government. Therefore, the government did suppress this evidence even though the prosecution was not aware of its existence. The police department failed to provide it to the prosecution.

Finally, it must be determined whether the evidence was material-- that is, whether, had the jury been provided with the evidence, there is a reasonable probability that the result would have been different. *Haddon v. State*. Here, this is not the case. Had this evidence been presented to the jury the jury would have been provided with the full statement. The jury would have heard that Reed no longer knew who was in the courtyard and didn't know why she lied to Detective Lee. She was asked to provide any additional information, and she replied that "he just told me to tell you he didn't do it." When she was asked who she shrugged and did not respond. The jury would not have found this material to be material and the finding of the court would not have been different if it was introduced. Therefore, there was no violation of Brady by the prosecution, and the defendant should be denied a new trial.

II. The Prosecution did not Violate Brady v. Maryland by failing to Disclose Trumbull's statement while being transported to the hospital because such evidence was not subject to Brady.

Trumbull's statement to the EMT was not in the government's possession and was not suppressed by the government. It has been held by the Franklin Court of Appeals that it would stretch the law too far to charge the government with possession of all records of all government agencies regardless of whether these agencies had any part in the prosecution of the case. *State v. Capp*. The court further held that if a government agency was not involved in the investigation of or prosecution of the defendant, its records are not subject to disclosure under Brady. *Id.* Mr. Trumbull was transported to the hospital after he was shot by the Franklin City ambulance service. While being transported he made a statement in the presence of the ambulance technician regarding the defendant stating that "i dont know exactly what happened or who shot me, but that rat, Henry Hale, thinks i owe him money. This is all his fault". The ambulance technician was never involved in the investigation or the prosecution of the defendant. This was further corroborated by the testimony of the attending ambulance technician during the hearing on the Defendant's motion for a new trial, when she was asked whether or not she was ever involved in the investigation or prosecution of the defendant, to which she responded "No, I wasnt even called as a witness." The ambulance service nor the technician were ever involved in the prosecution or the investigation of the case against the defendant, therefore, the records are not subject to disclosure under Brady.

Additionally, it was held in *State v. Capp* that the role of a hospital is to treat patients, not to investigate the crime. The sole role of the ambulance technicians was to transport Mr. Trumbull to the hospital after he was shot and injured. Their role was to provide medical treatment to Mr. Trumbull in order to stabilize his condition upon arrival to the hospital, not to document his statements for further investigation. While it is true that Mr. Trumbull made a statement while in the presence of the ambulance technician, it was not her duty to investigate the statement and be a part of the prosecution against the defendant. Therefore, the "government" did not possess the records housed by the ambulance technicians, and therefore did not suppress them.

Finally, the court in *State v. Capp* held that a prosecutor is not required to furnish a defendant with Brady material if that material is fully available to the defense through the exercise of due diligence. *State v. Capp*. Here, during the testimony of the attending ambulance technician during the hearing on the Defendant's motion for a new trial, when she was asked whether or not she would have spoken to the defendant's attorney before trial if he would have asked, to which she responded "Yes." The defendant's attorney and prosecution had equal access to the information held by the ambulance technicians. Defense counsel could have spoken with the technician himself and easily gained the information because the technician would have voluntarily spoken with him. The records were not solely within the control of the prosecution and thus were not subject to Brady Disclosure.

III. Hale was not Prejudiced by the Admission of Reed's Hearsay Statements because he Married her with the Intention of Causing her Unavailability at Trial.

Under Rule 804 of the Franklin Rules of Evidence, certain hearsay statements may be admissible if the witness is unavailable. *State v. Preston*. A witness who claims spousal privilege is considered to be unavailable. FRANKLIN RULE OF EVIDENCE 804(a)(1). The issue to be decided then, is whether the hearsay of the statements meet any of the exceptions as provided in Rule 804(b). *State v. Preston*. Franklin Rule of evidence 804(b)(6) allows for the admission of a hearsay statement which is offered "against a party that wrongfully caused--- or acquiesced in wrongfully causing--- the declarant's unavailability as a witness, and did so intending that result." *Id.* Importantly, the rule required that the conduct causing the unavailability to be wrongful; it does not require that it be criminal. *Id.* Under Rule 804, the question is whether the defendant engaged in conduct designed to prevent the witness from testifying. Here, the facts are similar to the *Preston*, yet they are distinguished in a very important way. In *Preston*, the court held that the mere act of marriage did not constitute the intention of wrongfully causing the witness's unavailability. *Id.* Here, the offense occurred on June 20, 2017. The defendant proposed to Reed, the only witness in the case just a month after the offense and they were married before trial on August 25, 2017. At trial, Reed testified the defendant told her that he wanted to marry her quickly, before the trial started. He further told her that it would be hard for them to stay together if she testified against him.

Here, as distinguished from the facts in *Preston*, the defendant and Reed were not engaged to be married before the offense occurred, they were only engaged to be married a month after the offense was committed and were married quickly before trial. While a defendant has a right under Rule 804 to have his wife unavailable to testify at the trial against him under the spousal privilege, he can only assert this privilege if it was not done so in a way that wrongfully causes the declarant's unavailability at the trial. Because the defendant proposed to Reed after the offense occurred and he expressed to her that it was imminent that they be married before trial or could not continue to be together, the defendant did not act in conformity with the Rule. Therefore, the spousal privilege should not apply in this case and the defendant was not harmed by the inclusion of his wife's testimony by the trial court because he wrongfully caused the declarant's unavailability by and did so intending her to not be able to testify against him, as she was the only witness to the offense.

Conclusion and Prayer

Under Franklin Rule of Criminal Procedure 33, upon a defendant's motion, the court may vacate any judgment and grant a new trial if an error during or prior trial violated a state or federal constitutional provision, statute or rule, and if the defendant was unduly prejudiced by that error. The defendant was not harmed in this case because no state or federal constitutional provision, statute or rule was violated in the commission of the defendant's original trial. Therefore, the prosecution prays that this court deny the defendant's motion for new trial upon a showing that none of the defendant's rights were violated and he received a fair trial.