

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court building in the City of Richmond on Thursday the 13th day of February, 2020.

Present: All the Justices

Lester B. Lynch,

Appellant,

against

Record No. 190048
Circuit Court No. CL17-583

Beth Cabell, Warden,
Sussex II State Prison,

Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Norfolk.

Lester B. Lynch (“Lynch”) appeals from a judgment of the Circuit Court of the City of Norfolk (“circuit court”) that denied his petition for a writ of habeas corpus alleging a violation of the prosecution’s requirement to disclose potentially exculpatory information as set by *Brady v. Maryland*, 373 U.S. 83 (1963). Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that the judgment of the circuit court should be affirmed.

I. Facts and Procedural Background

In his habeas petition, Lynch asserted that the Commonwealth violated *Brady* when it suppressed the pre-trial video statements of Ronald Scott, Tamika Reid, and Kenneth Parker (collectively, “the statements”) in which the three witnesses implicated Lynch in a June 2001 home invasion, robbery, and murder. Lynch’s first two jury trials ended as mistrials in October 2002 and March 2003 due to the failure of the juries to reach a unanimous decision. Lynch was later convicted of first-degree murder, burglary, robbery, and three counts of using a firearm in the commission of a felony in a May 2003 jury trial. George Anderson represented Lynch throughout his trials. Lynch’s direct appeals and his first habeas petition were unsuccessful.

In 2016, Lynch filed a motion for preservation of evidence. He later received a June 2001 Norfolk police evidence voucher listing recorded statements from Reid, Parker, and Scott. He was also notified that the recordings had been destroyed in 2015. Lynch filed the present

petition for a writ of habeas corpus in 2017, asserting a *Brady* violation by the Commonwealth for suppressing the three recorded statements prior to trial. To prove that he had not received the statements, Lynch relied on a discovery letter from the Commonwealth that contained a summary of the statement by Reid. The summary provided that

[w]hen [Reid] was interviewed the night the crime occurred, he initially identified two of the assailants as Gregory Williams . . . and his brother, Christopher Williams He stated he got a good look at Gregory Williams, and assumed that his brother, Christopher, was also present. It was later proven that Christopher Williams could not have been present. He also described a third assailant who was light-skinned. The victim was shown several photo lineups, and selected the photographs of Gregory Williams and Lester Lynch out of those separate lineups.

Lynch also relied on the fact that the discovery letter did not list the statements.

Lynch non-suited the habeas petition in June 2017 and refiled in November 2017. Lynch attached an affidavit from Anderson that stated he had “reviewed [his] entire file [and] read all available transcripts.” Anderson “state[d] unequivocally that the Commonwealth never advised [him] of the existence of tape recorded statements.” The Warden moved to dismiss Lynch’s petition as time-barred and without merit.

Lynch filed a second affidavit from Anderson prior to an evidentiary hearing in the circuit court. At this time, the Commonwealth had located and provided Lynch with copies of the transcribed statements. In his second affidavit, Anderson stated that he had reviewed the statements and could “unequivocally” state he had received none of the information they contained from the Commonwealth during Lynch’s trials.

During the evidentiary hearing on the present habeas application, Anderson testified that he had not received the statements or the recordings during Lynch’s criminal trial. He testified that he would have used inconsistencies in the transcripts when cross-examining the three witnesses to undermine their identifications of Lynch. Anderson stated that he would likely recall the statements if he had them at trial and would have used them because one witness identified someone else as the shooter. However, he also testified that he could not recall any specifics of Lynch’s trial except for the fact that Lynch was tried three times, that Detective Ford had been involved in the case, and that Lynch was serving a 68-year sentence.

Anderson further testified that he “remember[ed] receiving some statements” but he could not “recall specifically which transcripts from witnesses” he received. Anderson could not remember any of the witnesses’ names, yet testified that he knew “specifically” that he did not receive any recorded statements or transcripts from them. Anderson stated that he could not “say that [he] didn’t receive the information that was in those statements from another source.” Anderson could not recall the statements, the names of the witnesses, or the information from the statements, and he admitted that he could not find his file from representing Lynch.

The circuit court ordered the parties to file post-hearing briefs in lieu of closing argument. The final order states that the Warden filed a post-hearing brief and that Lynch had replied. The order does not mention Lynch’s August 31, 2018 post-hearing brief.* The court held that Lynch had “clearly” satisfied the prejudice element of a *Brady* claim, but had failed to prove that the Commonwealth suppressed the statements. The court noted that Anderson’s supplemental affidavit stated:

I have had the opportunity to review the transcripts in their entirety. With respect to the transcripts pertaining to Kenneth Lee Parker, Tamika Reid, and Ronald Scott, I unequivocally state that none of the information contained in said transcripts was ever produced to me during the course of my representation of [Lynch] during three separate jury trials.

The court then held:

With regard to this specific claim in his affidavit, Mr. Anderson was cross-examined by the Assistant Attorney General at the evidentiary hearing on August 2, 2018. Mr. Anderson was also questioned by the [c]ourt regarding this specific claim that he did not receive the aforementioned transcripts. In both instances, Mr. Anderson, under oath, testified that he did receive transcripts of recorded statements of some witnesses at trial but he could not

* Lynch assigns error to the circuit court’s failure to consider his initial post-hearing brief based on the fact that the circuit court did not list it among the things it considered in making its ruling. Lynch seems to imply that had the circuit court considered the brief, its ruling would have been different. There is simply no evidence to support an assertion that the circuit court did not consider the evidence. *Yarborough v. Commonwealth*, 217 Va. 971, 978 (1977) (“Absent clear evidence to the contrary in the record, the judgment of a [circuit] court comes to us on appeal with a presumption that the law was correctly applied to all the facts.”). It is unlikely the circuit court neglected to read a brief it ordered the parties to file and far more likely that the failure of the trial court to mention it by name in the order was a mere oversight. In light of our ruling, we need not address this argument further.

locate his file prior to preparing the affidavit to determine whether he had copies of the transcribed police statements of the witnesses in question. He further testified that he did not recall receiving the police statements from the Commonwealth, but he could not be sure the he did NOT receive them. On further questioning by the [c]ourt, Mr. Anderson confirmed that he could not recall whether he received this specific evidence from the Commonwealth. The Attorney General's Post Hearing Brief argues that this is in direct contradiction to the Commonwealth's discovery letter from the file and Mr. Anderson's own affidavit of July 11, 2018. The [c]ourt agrees.

The circuit court denied the petition for a writ of habeas corpus. This appeal followed.

II. Analysis

Lynch claims that his Fourteenth Amendment rights, and his corresponding rights under the Constitution of Virginia, were violated by the Commonwealth's failure to disclose exculpatory information as required by *Brady*. Under the *Brady* rule, the Commonwealth's suppression of evidence favorable to the accused and material to either guilt or punishment, violates due process. *Brady*, 373 U.S. at 87.

There are three components of a violation of the rule of disclosure first enunciated in *Brady*: a) The evidence not disclosed to the accused "must be favorable to the accused, either because it is exculpatory," or because it may be used for impeachment; b) the evidence not disclosed must have been withheld by the Commonwealth either willfully or inadvertently; and c) the accused must have been prejudiced.

Workman v. Commonwealth, 272 Va. 633, 644-45 (2006) (quoting *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999)).

Lynch had the burden of proof to establish "each of these three components to prevail on [his] *Brady* claim." *Commonwealth v. Tuma*, 285 Va. 629, 635 (2013) (citing *Skinner v. Switzer*, 562 U.S. 521, 536 (2011)). "[W]e give deference to the circuit court's factual findings and consider those findings binding upon this Court unless they are plainly wrong or without evidence to support them." *Lenz v. Warden of Sussex I State Prison*, 267 Va. 318, 327 (2004).

The evidence Lynch provided during the evidentiary hearing only showed that the recordings and/or statements were not included in a discovery letter from the Commonwealth and were not referenced specifically during trial. The evidence did not support Lynch's argument that the Commonwealth suppressed the statements from Anderson and Lynch.

Anderson could not recall any specific information from Lynch’s criminal trial, yet testified that he must not have received the statements from Reid, Scott, and Parker because he did not use them in cross-examination. He stated in an affidavit that he reviewed his “entire file” from Lynch’s trial, yet later testified during the evidentiary hearing that he was unable to locate the file. As the circuit court found, “Anderson, under oath, testified that he did receive transcripts of recorded statements of some witnesses at trial but he could not locate his file prior to preparing the affidavit to determine whether he had copies of the transcribed police statements of the witnesses in question.” The court further stated that Anderson “did not recall receiving the police statements from the Commonwealth, but he could not be sure the he did NOT receive them.” Finally, the court found that “Anderson[] repeatedly stated that he could not recall whether or not he received the statements of Tamika Reid, Ronald Scott, and Kenneth Parker.”

Based on the record before the Court, the circuit court’s judgment was not plainly wrong or without evidence to support it. The evidence was inconclusive to show that Anderson did not receive the statements or did not know the information contained in them. The circuit court was not plainly wrong in finding that Lynch failed to prove a *Brady* violation because he did not show “that the Commonwealth suppressed the statements at issue or that [Anderson] did not even receive the statements.” Accordingly, we affirm the judgment of the circuit court.

This order shall be certified to the Circuit Court of the City of Norfolk.

A Copy,

Teste:

A handwritten signature in black ink, appearing to be 'JBR', with a long horizontal flourish extending to the right.

Clerk