

North Carolina Appellate Advocacy Training
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WRITING THE LEGAL ARGUMENT: A FEW WRITING SAMPLES

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HOW NOT TO START YOUR LEGAL ARGUMENT

The Due Process Clause of the Fifth Amendment to the United States Constitution guarantees that any defendant who exercises his right to a jury trial under the Sixth Amendment will be assured that his trial will be a fair one. In Brady v. Maryland, the Supreme Court held that as part of its guarantee of a fair trial, the Due Process Clause requires that the State disclose to the defense anything that is material, exculpatory, and within the actual or constructive possession of the prosecution or its agents. The materiality requirement of Brady establishes a standard under which a conviction must be reversed when exculpatory material was not turned over to the defense if that material was such that there is a reasonable probability that disclosure to the defense would have resulted in a different verdict. . . .

**AND NOW FOR A BETTER (AND MORE INTERESTING)
WAY OF STARTING THE BRIEF**

Point headings and subheads must be factual, not generic.

POINT ONE: THE STATE IMPROPERLY FAILED TO DISCLOSE THAT ITS ONLY EXPERT WITNESS, PLAY THERAPIST MEG BOWLES, FLUNKED OUT OF THE GRADUATE COURSE IN HER "SPECIALTY," LIED ABOUT HER CREDENTIALS TO GET HER JOB, AND MISLED THE COURT AND JURY ABOUT HER CREDENTIALS WHEN SHE TESTIFIED. THE PROSECUTOR KNEW ABOUT MS. BOWLES'S LIES BEFORE AND DURING HER TESTIMONY, AND FAILED TO TELL THE COURT OR DEFENSE COUNSEL ABOUT THEM. INSTEAD, THE PROSECUTOR TOLD MS. BOWLES NOT TO BRING THEM UP.

- A. The State's Introduction of Testimony It Knew to Be False Violated Mr. Bell's Rights Under Giglio v. United States and Napue v. Illinois.

- B. The State's Failure to Disclose Evidence That Its Only Expert Lied About Her Credentials Violated Brady Because It Deprived the Defense of Powerful Evidence That Would Have Impeached the Testimony of the State's Only Expert Witness.

POINT TWO: THE STATE IMPROPERLY FAILED TO DISCLOSE THAT AN INDEPENDENT WITNESS TOLD THE POLICE SHE HEARD THE COMPLAINANT AND THE COMPLAINANT'S MOTHER ADMIT THEY FABRICATED THE ACCUSATION AGAINST MR. BELL. THIS VIOLATED BRADY BECAUSE IT ILLEGALLY WITHHELD SUBSTANTIVE EVIDENCE EVIDENCE OF MR. BELL'S INNOCENCE, AND BECAUSE IT ILLEGALLY WITHHELD EVIDENCE THAT COULD HAVE BEEN USED TO IMPEACH THE TRIAL TESTIMONY OF BOTH THE COMPLAINANT AND HER MOTHER

Do not begin the argument section with legal boilerplate. Instead, start by explaining in factual terms exactly why you should win

The State admits that it knew Meg Bowles twice gave false and misleading evidence about her credentials, and the prosecutor did nothing to correct it..

Even worse, everyone agrees that before Ms. Bowles took the stand at trial, she came clean and told the prosecutor that she had actually flunked out of school, lied on her resume, and obtained her “expert” job by lying to her employer.

What did the prosecutor do when she learned her witness had been lying? She concealed the information from the court, hid it from the defense, and told the witness “don’t bring it up unless someone else brings it up first.”

The State’s witness provided false and misleading information to the court and the defense twice: First, during consideration of the Daubert motion, when she submitted a phony resume that included a non-existent masters degree and omitted mention of her flunking out of her certification program. And second, when she gave testimony at trial that omitted the fact that she had flunked out, and intentionally gave the impression that her resume was true. The prosecutor not only knew of these falsehoods, but failed to disclose them, offered them as evidence, and vouched for them in arguments to the judge and jury.

There is no doubt that when an witness has lied about his or her credentials, those lies can be used to impeach the witness at trial. CITES. In State v. _____, for example,

OR

In Napue v. Illinois, the U.S. Supreme Court held it to be reversible error for a prosecutor to knowingly introduce false evidence. Etc.

It is undisputed that the prosecutor at Mr. Bell's trial introduced false evidence and knew that it was false at the time she introduced it. Etc. . . .

When you begin to discuss caselaw, do so in a factual way. Be sure to quickly explain why the cases you are citing are factually applicable to the circumstances of your case.

In Brady v. Maryland, and Kyles v. Whitley, the Supreme Court held that the Due Process Clause of the U.S. Constitution requires the prosecution to disclose any evidence in its possession that is “favorable to the defense.” Withholding such material also violates Article ____, Section 14 of the North Carolina Constitution. This rule does not only apply to things that directly show the defendant is not guilty. State v. . It also applies to material that is not exculpatory, but can be used to impeach a prosecution witness. Bagley v. United States; State v. _____.

The uncontradicted evidence that the State’s only expert witness lied about her credentials – that she had actually flunked out of her graduate program and only obtained her “expert” job by falsifying her resume – was therefore Brady material for two reasons:

It could have been used to directly impeach Bowles’s trial testimony.

It would have also gone towards discrediting crucial substantive evidence against Mr. Bell.

Directly on point is this Court's decision in State v. Hall. DISCUSS facts of Hall.

The similarity between the facts of Hall and those of Dave Bell’s case are obvious. In both cases, an expert witness lied about her credentials to enhance the credibility of her testimony. In both cases, the State knew before the trial began that the “expert” was going to lie about her credentials. In both cases, the State failed to disclose the witness’s lie to defense counsel. And in both cases, the prosecutor used her closing argument to extol the “sterling” credentials of the so-called expert. In Hall, this Court ruled that a reversal was mandated.