

Pennsylvania Commonwealth Court Clarifies Due Process Rights When a Police Officer is Placed on a “Do Not Call” List

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In *Brady v. Maryland* (1963), the United States Supreme Court held that prosecutors must provide exculpatory information to defense counsel, and in *Giglio v. United States* (1972), it extended the holding to include information suggesting a witness may not be credible. Many law enforcement agencies and district attorneys’ offices have created *Brady* lists (or “Do Not Call” lists) – lists of officers whose disciplinary or testimonial history (including but not limited to current and past conduct investigations, allegations of misconduct, and officers who have been stripped of their police powers) must be disclosed if they are called to testify.

“An officer’s inclusion on a list of witnesses excluded from any future hypothetical trial, regardless of the officer’s role or testimony, is preemptive in nature. Functionally, a prosecutor’s decision to include a police officer on a “Do Not Call” list prevents an officer from performing primary functions of police work. Inclusion on such a list can result in an officer’s termination from employment because the officer is no longer capable of performing many police functions or duties. Thus, for these reasons, a police officer’s inclusion on such a list can be career-ending.” *Corbo v. Chester County*, 336 A.3d 1 (Pa. Commw. Ct. 2025).

In *Corbo v. Chester County*, Plaintiff appealed the order from the trial court, which granted Defendant its Motion for Judgement on the Pleadings. In the original complaint, Plaintiff filed a Complaint against the District Attorney, or DA, stating that he was placed on a Do Not Call “blacklist,” in which he will never be called to testify in court. Plaintiff alleged that his placement on the list interfered with his job, as police officers are often required to testify. The Township informed Plaintiff that if he remains on the list, he will be terminated, as he cannot perform the duties of his job. Plaintiff alleged that being placed on the list violated his due process rights, both substantively and procedurally. Specifically, Plaintiff alleged that the DA did not record any proceedings that led to her decision, failed to call witnesses, failed to offer any witnesses for cross-examination, failed to hold a hearing before making her decision, and acted as both prosecutor and judge.

In her answer, the DA stated that Plaintiff was placed on the list for supplying his ex-girlfriend with confidential case information and later provided false statements to detectives. Additionally, the DA stated she did give Plaintiff a chance to present his position, which he utilized. Plaintiff admitted to supplying confidential information but maintained that he did not supply false information to detectives. The trial court concluded the DA had the power to place Plaintiff on a list. Plaintiff appealed, stating that the trial court used the incorrect legal standard and did not consider the facts most favorable to him as the non-moving party. The DA argued that Plaintiff did not make a claim of a violation of substantive due process, as he did not identify a constitutionally protected right.

The court agreed that the trial court failed to observe and comply with the legal standard of review governing Motions for Judgement on the Pleadings, as the trial court’s Order contains findings of fact that are plainly inconsistent with Plaintiff’s pleadings. For instance, there were discrepancies of fact in the Order as to whether Plaintiff was placed on a list, and whether Plaintiff had been given a chance to get off the list. Furthermore, the court agreed that the DA

has broad discretion to decide litigation, but the case law that the DA brings in support of this issue does not address the issue raised by Plaintiff.

While prosecutors have a right to turn over evidence that can impeach a witness, as evidenced in *Giglio v. United States*, they cannot deprive police officers of their due process rights when placing them on a do not call list, as evidenced in *Fraternal Ord. of Police Lodge No. 5 by McNesby v. City of Philadelphia*. Specifically, the court stated in *Lodge No. 5* that adequate due process requires an impartial tribunal, and it is not an adequate remedy for Plaintiff to challenge the DA's decision to the DA. Furthermore, as discussed in *Lodge No. 5*, prosecutors maintain immunity from litigation challenging their official conduct, but Plaintiff seeks constitutional compliance. Additionally, Plaintiff sufficiently identified constitutionally protected rights in his claim, as his placement on the list prevents him from performing his job and impacts his right to reputation.

Therefore, whether a police officer is on a Do Not Call list is a material factual determination that must be made, as police officers have certain due process rights associated with their inclusion on said lists.