

**People v Robinson**

2006 NY Slip Op 30156(U)

May 4, 2006

Suffolk County Ct

Docket Number: 0002352/2004

Judge: C. Randall Hinrichs

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COUNTY COURT, SUFFOLK COUNTY

TRIAL TERM PART 9

THE PEOPLE OF THE STATE OF NEW YORK,

BY: C. RANDALL HINRICHS, J.C.C.

vs

May 4, 2006

TRAVIS ROBINSON,

CASE NO: 2352A-04

Defendant

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Defendant, having been convicted of two counts of Murder in the Second Degree, (under both intentional murder and felony murder theories in violation of Penal Law (PL) §§ 125.25(1) and 125.25(3), respectively) and one count of Criminal Possession of a Weapon in the Second Degree, in violation of PL § 265.03(2), on February 3, 2006 following a jury trial, has brought a motion, pursuant to Criminal Procedure Law (CPL) § 330.30(1), to set aside the verdict. The People oppose the motion. Specifically, defendant claims: 1) legal insufficiency of the evidence; 2) various *Brady* violations; 3) lack of corroboration of certain witnesses' testimony; and 4) prejudice to the defendant resulting from the People eliciting testimony that defendant was in custody.

In arriving at the instant decision, the Court has received and considered the defendant's motion, defendant's "Supplemental Statement" (dated March 24, 2006), the People's Affidavit in Opposition and the defendant's Sur Reply.

Initially, following a guilty verdict, evidence must be viewed in a light most favorable to the People. *People v Thompson*, 72 NY2d 410 (1988) at 413. Further, a verdict is supported by legally sufficient evidence when "there is any valid line of reasoning and permissible inferences which could lead a rational person to the conclusion reached by the jury on the basis of the evidence at trial." *People v Bleakley*, 69 NY2d 490 (1987) at 495.

Moreover, the jury's findings regarding the credibility of witnesses must be accorded great weight on appeal since the jury was in the best position to see and hear the testimony in order to make determinations regarding credibility. See, for example, *People v Littlejohn*, 307 AD2d 976, 762 NYS2d 921 (2<sup>nd</sup> Dept., 2003.) In *Littlejohn*, the court, in rejecting a claim of insufficiency of the evidence held "resolution of issues of credibility, as well as the weight to be accorded to the evidence presented, are primarily questions to be determined by the trier of fact, who saw and heard the witnesses. The determination should be accorded great weight on appeal

and should not be appealed unless clearly unsupported by the record.”

CPL § 330.30(1) permits a court to set aside a verdict for “any ground appearing in the record which, if raised upon an appeal from a prospective judgment of conviction, would require a reversal or modification of the judgment as a matter of law by an appellate court.” The Court finds that the testimony presented by the People at the instant trial was not “clearly unsupported by the record,” but rather, provided testimony which the jury, in the best position to assess his credibility, was free to believe. Here, while there were apparently inconsistencies between the testimony of Danny Beadrot in the Grand Jury and his testimony at trial, those inconsistencies were fully exploited by the defense during cross examination of Mr. Beadrot. Therefore, the issues of credibility raised in defendant’s motion, including his claims of perjury by Mr. Beadrot, do not present a ground which, if raised upon appeal, would require reversal.

Defendant next argues that he was denied a fair trial as a result of the People’s failure to provide him earlier with a copy of statements made by Randy Deschamps and Rosa Fernandez. The central aspect of the Fernandez statement which defendant contends renders the statement Brady material is Fernandez’s assertion that Elvis Deschamps (defendant’s co-defendant and Fernandez’s boyfriend) admitted to Fernandez that he (Deschamps) shot the victim. The People’s theory at trial was that defendant, not Deschamps, shot the victim. Significantly, the defense fully explored this issue, before the jury, with Elvis Deschamps himself at trial.

The trial record makes clear the fact that the People did not turn over to the defense the two subject statements of Randy Deschamps and Rosa Fernandez until (shortly before jury selection.) The record will also confirm this Court’s agreement with the defense that these statements should have been provided earlier. In response, the Court granted the defendant’s request for a continuance to allow ample time for defense counsel and/or defense investigators to speak to witnesses. The Court also directed that funds for defense investigators would be provided, based upon defense counsel’s representation that defendant was currently indigent, for the specific purpose of investigating the two statements and related leads.

“[‘While] the People unquestionably have a duty to disclose exculpatory material in their control,’ a defendant’s constitutional right to a fair trial is not violated when, as here, he is given a meaningful opportunity to use the allegedly exculpatory material to cross-examine the People’s witnesses or as evidence during his case.” *People v Cortijo*, 70 NY2d 868, 870 (1987) quoting *People v Brown*, 67 NY2d 555, 559 (1986.) See also, *People v Maddery*, 282 AD2d 761, 724 NYS2d 346 (2<sup>nd</sup> Dept., 2001.) Similarly here, contrary to the defendant’s contentions, the Court continues to hold as it did on the record when the statements were provided to the defense, that although the statements should have been provided earlier, the defense received them in ample time to use the statements effectively at trial. Further, any potential prejudice to the defendant was alleviated by the Court’s grant of an adjournment and authorization for an investigator to fully explore issues which the statements may have raised. Additionally, Randy Deschamps, Rosa Fernandez and Elvis Deschamps all testified at the trial and defense counsel fully explored the subjects raised in the respective statements with each of these witnesses before the jury.

Defendant’s argument that the testimony of Alexis Bouchard and Justyna Furleppa (to whom defendant admitted the murder) was not corroborated, as required by CPL § 60.50, is also unavailing. The Court specifically inquired of defense counsel, both in an informal charge conference in chambers and during the request to charge on the record on February 1, 2006, whether the defendant was requesting an instruction, pursuant to CPL § 60.50, regarding the requirement of corroboration. Defense counsel unequivocally stated on the record that he was

not requesting such a charge. In any event, more than ample corroboration that a crime was, in fact, committed was presented at the instant trial. This corroboration requirement has repeatedly been held to require minimal proof. The Court of Appeals, for example, in *People v Daniels*, 37 NY2d 624, (1975) summarized the CPL § 60.50 corroboration requirement as follows:

*"It is necessary for the prosecution to come forward with "additional proof that the offense charged has been committed." ( CPL 60.50.) The purpose of this rule is to guard against the possibility that a defendant might be convicted and jailed for a crime that never occurred. However, the policy behind the statute is satisfied by the production of some proof, of whatever weight, that a crime was committed by someone. This additional evidence may be either direct or circumstantial. The independent evidence need not even connect or tend to connect the defendant with the crime. The confession itself provides the means for understanding the circumstances of the transaction." Daniels, id at 629.*

Clearly, at the present trial, the testimony of the crime scene police officers, the medical examiner and numerous other witnesses provided ample corroboration that a crime was committed.

Defendant also contends that corroboration was lacking as to the testimony of Daniel Beaudrot.. The corroboration requirement as it applies to the testimony of accomplices, as required by CPL § 60.22, is different than the CPL § 60.50 standard. CPL § 60.22(1) requires that the corroborative evidence must tend "to connect the defendant with the commission of [the] offense." Here, unlike the CPL § 60.50 corroboration charge which defendant declined to have charged, the defendant requested, and the Court delivered to the jury a charge which clearly conveyed this standard as it related to the testimony of both Daniel Beaudrot and Elvis Deschamps. The Court charged the jury in this regard, in sum and substance, as follows:

*"Under our law, Elvis Deschamps is an accomplice because there is evidence that he participated in and was convicted of, a crime based upon conduct involved in the allegations here against the defendant. Also, Daniel Beaudrot is an accomplice.*

*Our law is especially concerned about the testimony of an accomplice who implicates another in the commission of a crime, particularly when the accomplice has received, expects or hopes for a benefit in return for his/her testimony.*

*Therefore, our law provides that a defendant may not be convicted of any crime upon the testimony of an accomplice or accomplices unless it is supported by corroborative evidence tending to connect the defendant with the commission of that crime.*

*In other words, even if you find the testimony of Elvis Deschamps and Daniel Beaudrot to be believable, you may not convict the defendant solely upon that testimony unless you also find that it was corroborated by other evidence tending to connect the defendant with the commission of the crime.*

*The corroborative evidence need not, by itself, prove that the defendant is guilty. What the law requires is that there be evidence, apart from the testimony of the accomplice, that tends to connect the defendant with the commission of the crime charged in such a way as may reasonably satisfy you that the accomplice is telling the truth about the defendant's participation in that crime."*

The Court finds that there was more than ample evidence at the trial, apart from the testimony of Danny Beaudrot and Elvis Deschamps, which tended to connect the defendant to the commission of the crimes for which defendant was convicted.

Defendant also contends that the verdict should be set aside as a result of the prosecutor eliciting from witness Justyna Furleppa the fact that defendant was in custody. The Court agrees with the defendant that this testimony should not have been elicited. However, the Court sustained defendant's objection, struck the reference to defendant's incarceration from the record and delivered a curative instruction to the jury to disregard the reference. The Court also denied defendant's application for a mistrial. The Court finds, as it did when the application for a mistrial was denied, that any prejudice to the defendant which may have resulted from the brief reference to defendant being in custody was alleviated by the Court's curative instruction. See, for example, *People v Moore*, 148 AD2d 754, 755, 539 NYS2d 486 (2<sup>nd</sup> Dept., 1989) and *People v Santiago*, 52 NY2d 865 (1981.) In addition, the Court offered to read to the jury the Criminal Jury Instruction charge which states the jury is to draw no unfavorable inference from the fact that defendant is in custody, but only if specifically requested by the defendant. Defendant declined this offer by the Court.

Finally, defendant argues in his motion, and further elaborates in his Supplemental Statement, that the People committed a Brady violation by withholding from the defense information which the defense alleges was provided to the People by Elvis Deschamps regarding Abdul Taylor's involvement in this case. Defendant submits that statements attributed to the prosecutor in the pre-sentence report prepared by the probation department regarding the instant conviction, makes clear that the prosecutor received information from Deschamps, regarding Taylor's involvement "in significantly more detail than was given by the witness (Deschamps) at trial" (Defendant's Supplemental Statement, paragraph 4.)

Specifically, defendant points to the following quote from the pre-sentence report: "ADA Chalifoux related Deschamps heard about a white marijuana dealer who he was told was a "bitch" and therefore, would be an easy rip off." (Pre-sentence report, Page 4, third paragraph, first line.) Defendant submits that this information contains details not testified to by Deschamps at trial. The Court disagrees. Elvis Deschamps testified, on this subject, as follows:

*"Question(Q) Direct examination by defense counsel Henry O'Brien, Esq.: Well, let's go over this again on that night. How did you make contact with Richie?"*

*Answer (A) Elvis Deschamps: Through, um, my cousin Randy's friend Taylor.*

*Q: Yeah.*

*A: He gave me his phone number, he told me that Richie sold marijuana and that, um, he told me he was a small kid, he was a punk, and that if I wanted to rob him it would have been easy. That he knew his number. He met him, um, Sam's Club with Travis. They had met him there. And he basically told me that, um, he'd be an easy person to rob, that he had a lot of marijuana.*

*Q: Taylor told you that?*

*A: Yes."*

(Excerpted portion of trial transcript, testimony of Elvis Deschamps, direct examination by defense counsel, page 28, lines 7 - 21.)

The court finds no significant difference between the testimony of Elvis Deschamps at

trial and the paraphrased synopsis of that testimony provided to the probation department by the prosecutor. Indeed, aside from the nuance of a semantic change from “punk” to “bitch”, a substitution of one slang term for another of similar meaning, the Court finds the testimony was relayed accurately to the probation department. The meaning of the testimony (ie: that Taylor told Deschamps that the victim would be an easy robbery target) was accurately conveyed. Contrary to defendant’s contention, nothing in the testimony of Elvis Descamps or in the comments by the prosecutor to the probation department raise any inference that the prosecutor possessed information from Elvis Descamps which was withheld from the defense. Defendant has failed to make a factual showing that a hearing would be necessary to resolve this issue.

Defendant’s claim that the People withheld Brady material by not revealing information given to them by Elvis Descamps regarding Abdul Taylor’s involvement in the instant crime is entirely speculative. See *People v Finley*, 190 AD2d 859, 593 NYS2d 876 (2<sup>nd</sup> Dept., 1993) and *People v Delvecchio*, 187 AD2d 726, 591 NYS2d 799 (2<sup>nd</sup> Dept., 1992.) “*Brady material is defined as information in the prosecutor’s possession that is both favorable and material to the defense. We find that the information allegedly withheld here does not fall within the rule enunciated in Brady, as it could not be considered exculpatory.*” *Delvecchio*, at 726. Contrary to defendant’s contentions, there is no basis in the record, nor in the presentence report, from which to conclude that Abdul Taylor was involved in the instant murder. The information regarding Taylor as testified to by Elvis Descamps at trial is simply that it was Taylor who suggested the victim would be a good target for a robbery. This information is not exculpatory to the defendant. While it may be argued that the information is nonetheless material to the defense, defendant has made no showing whatsoever that the People were aware of this information prior to Elvis Descamps testimony at trial. Moreover, defendant fully explored this issue with Elvis Descamps before the jury.

Further, the information, claimed by defendant to be Brady material, was elicited from Elvis Descamps during direct examination by defense counsel on the defense case. “Even assuming, arguendo, that the conversation constituted Brady material, the defendant’s claim is without merit. Significantly, the defendant had the opportunity during the trial to cross-examine the witness using the allegedly exculpatory evidence. It is well settled that a defendant’s constitutional right to a fair trial is not violated when, as here, he was given a meaningful opportunity to use the allegedly exculpatory material to cross-examine the People’s witnesses *or as evidence during his case.*” *People v Barnes*, 200 AD2d 751, 752, 607 NYS2d 92 (2<sup>nd</sup> Dept., 1994) (Emphasis added.) See also *People v Cortijo*, 70 NY2d 868 (1987.) Accordingly, defendant’s claim that the People withheld Brady material by withholding information about Abdul Taylor provided to them by Elvis Descamps is denied without a hearing.

Defendant’s motion to set aside the verdict is, for the reasons stated herein, denied. This memorandum shall constitute the decision and Order of the Court. The matter is set down for sentencing on May 17, 2006.

  
J.C.C.