

People v Singh

2007 NY Slip Op 30226(U)

March 15, 2007

Supreme Court, Queens County

Docket Number: 0002203

Judge: Gregory L. Lasak

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SUPREME COURT OF THE STATE OF NEW YORK
CRIMINAL TERM: PART K-23
P R E S E N T: HON. GREGORY L LASAK,
Justice.

-----X
THE PEOPLE OF THE STATE OF NEW YORK

- against-

Indictment No.: 2203/01

NAVDEEP SINGH,

Motion: To Vacate Judgment of
Conviction pursuant to CPL 440.10

Defendant.

-----X


MURRAY RICHMAN, ESQ.
For the Defendant

RICHARD A. BROWN, D.A.

BY: A.D.A. USHIR PANDIT
Opposed

Upon the foregoing papers, and due deliberation had, the motion is denied. See accompanying memorandum this date.

Kew Gardens, New York
Dated: March 15, 2007



GREGORY L. LASAK
JUSTICE SUPREME COURT

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM, PART K-23

-----X
THE PEOPLE OF THE STATE OF NEW YORK

BY: GREGORY L. LASAK, J.S.C.

- against -

Indictment No.: 2203/01

NAVDEEP SINGH,

Defendant.

-----X

The following constitutes the opinion, decision and order of the Court.

By motion dated September 8, 2006, defendant seeks an order of the court to vacate the judgment of conviction, dated September 15, 2003, upon the grounds of newly discovered evidence, or in the alternative ordering an evidentiary hearing.

Defendant's specific claim is that he has newly discovered evidence which would probably have resulted in a more favorable outcome if presented at trial. Defendant further states the evidence could not have been discovered with the exercise of due diligence.

In response, the People have filed an affirmation in opposition dated November 14, 2006, whereby they assert that defendant's motion should be denied in its entirety. Defense counsel further submitted a reply, December 13, 2006.

For the reasons stated herein, defendant's motion is denied.

FACTS

On September 7, 2001, a five-count indictment was filed with the court charging defendant, with Attempted Murder in the Second Degree; two counts of Assault in the First Degree; Criminal Possession of a Weapon in the Fourth degree; and Assault in the Third Degree.

On September 30, 2003, after a jury trial, defendant was convicted of one count of Assault in the First Degree, and Criminal Possession of a Weapon in the Third Degree.

Defendant was sentenced to a determinate term of imprisonment of five years on the Assault in the First Degree and one year on the Criminal Possession of a Weapon in the Fourth Degree, to run concurrently.

Defendant moved by motion on April 30, 2003, to set aside the jury's verdict on the grounds that the evidence presented was legally insufficient. On August 26, 2003 the Honorable Laura D. Blackburne denied defendant's motion. On November 29, 2004, the Appellate Division Second Department denied defendant's appeal and affirmed the judgment.¹ On March 23, 2006, this Court denied Defendant's motion to vacate this conviction pursuant to C.P.L. §440.30 that he was denied effective assistance of counsel.²

DECISION

Defendant's claim of newly discovered evidence is unpersuasive.

It is well-settled that, in order to successfully move to set aside a jury verdict pursuant to CPL §440.10 (1)(g) on the ground of newly discovered evidence, a defendant must prove, by a preponderance of the evidence, that the new evidence: (1) would probably change the result if a new trial were granted; (2) must have been discovered since trial; (3) could not have been discovered before trial by the exercise of due diligence; (4) must be material to the issue; (5) must not be cumulative; and (6) must not be merely impeaching or contradictory to former evidence. People v. Salemi, 309 N.Y. 208, 215-216 (1955); People v. Clerkin, 144 A.D.684 (2nd Dept. 1988); People v. Johnson, 133 A.D.2d 781 (2d. Dept. 1987). Defendant has not met this

¹On January 25, 2005, the Court of Appeals denied defendant's leave application.

²On August 24, 2006, Appellate Division, Second Department, denied defendant's leave to appeal this Court's decision.

burden.

Defendant claims that the newly discovered evidence he has obtained establishes that the “horsemen” mentioned during the trial is and was a gang. Defendant claims that had this information been presented at trial the outcome would have been more favorable to the defendant. Defendant argues that the People’s witnesses were questioned concerning who the “horsemen” were and answered that they were a high school basketball team. The defendant has failed to show that the new evidence would probably change the result if a new trial were granted and that such evidence was not or could not have been discovered before trial by the exercise of due diligence.


Defendant must show that the new evidence would have probably, and not merely possibly, resulted in a more favorable verdict the defendant if it had been received at trial; People v. Rivera, 108 A.D.2d 829 (2d. Dept.1985). Evidence that does not tend to exculpate the defendant is insufficient. People v. Wadley, 108 A.D.2d 943 (2d Dept. 1985). Furthermore, the evidence that defendant presents are internet correspondences and web-site pictures which he states indicate a gang affiliation of the witnesses who testified at trial. Defendant claims that the People’s witnesses presented perjured testimony that the “horsemen” were a basketball team. Defendant argues that the presentation by the prosecution that the People’s witnesses had “no-gang involvement” was misleading. Evidence used to impeach a witness on a collateral issue cannot justify setting aside a verdict after trial and does not require the trial court to conduct a hearing on the motion. People v. Paasewe, 276 A.D.2d 807, 808 (2nd Dept. 2000).

As stated in this courts prior decision, many potential defense witnesses were interviewed by both counsel and an investigator. At trial, a justification defense was presented and defendant testified on his own behalf. In addition, counsel presented four defense witnesses. The record also reflects that the witnesses where questioned regarding a group called the “horsemen”. Defendant fails to show that had the testimonials and photos been presented that they would have changed the outcome of the trial. It appears that the evidence would have only impeached or contradicted the witnesses testimony.

Accordingly, the Court finds the new items merely impeach the former evidence, defendant fails to establish that such evidence could not have been discovered prior to trial and finally, such evidence would not have changed the outcome of the trial. People v. Bean, 32 AD 3d 549 (3rd Dept. 2006).

The court finds no hearing is necessary. Defendant's motion is denied.

Kew Gardens, New York
Dated: March 15, 2007



GREGORY L. LASAK
JUSTICE SUPREME COURT