People v Craft
2008 NY Slip Op 31025(U)
April 8, 2008
Supreme Court, Albany County
Docket Number: 0000226/9991
Judge: Joseph C. Teresi
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION and ORDER
INDEX NO. 22-6999

SHERODD CRAFT,

Defendant.

Supreme Court Albany County All Purpose Term, January 29, 2008
Assigned to Justice Joseph C. Teresi

APPEARANCES:

Brett M. Knowles, Esq.
Assistant District Attorney
Office of the District Attorney
Albany County Judicial Center
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Albany, NY 12207

Sherodd Craft
Upstate Correctional Facility
P.O. Box 2001
Malone, NY 12953
Pro Se Defendant

TERESI, J.:

Defendant, Sherodd Craft, moves pursuant to CPL §440.10 seeking to vacate the judgment of conviction or, in the alternative, that a hearing be granted to determine whether grounds exist to warrant vacating the judgment. The People of the State of New York oppose this motion.

Defendant was charged in a four count indictment with two counts of murder in the second degree, one count of attempted murder in the second degree, and criminal possession

of a weapon. Defendant entered a plea of not guilty. The murder charges were a result of an incident that occurred on June 3, 2001, whereby Defendant and another man shot and killed Shakira Chambers and shot and wounded Javon Morton. The weapons possession charge was the result of a separate incident that occurred in May 2001. Defendant was found guilty by a jury of murder and attempted murder, and was acquitted of the possessions charge. Defendant's conviction was affirmed by the Appellate Division on January 25, 2007. The Court of Appeals denied Defendant's application for leave to appeal.

Defendant argues that his conviction should be vacated pursuant to CPL §440.10 (c) because the prosecutor introduced material evidence at trial that the prosecutor knew was false at the time of trial. Defendant states that during grand jury proceedings, it was discovered that the testimony of Adrian Teasley, a fourteen year old friend of Defendant and a prosecution witness, was inaccurate. In addition, Defendant argues that prosecution had knowledge of alleged misconduct by Detective Wilcox based on a newspaper article dated April 4, 2000, which could have been used by defense to attack Wilcox's credibility. Defendant contends that this was *Brady* evidence that was required to be turned over to the defense. Defendant further argues that conviction should be vacated pursuant to CPL §440.10 (g), as Defendant has uncovered new evidence that he could not have discovered before or during his trial, including the affidavit of Adrian LaMarche regarding Adrian Teasley's grand jury testimony and the newspaper articles regarding previous conduct by Detective Wilcox, namely alleged falsification of confessions. Finally, Defendant argues that his conviction should be vacated pursuant to CPL §440.10 (h), as he was denied effective assistance of counsel at trial. Defendant states that counsel failed to make a pre-trial motion for severance of the weapons possession charge from the murder

charges, failed to object to introduction of improper evidence, and failed to secure impeachment evidence that was in the possession of the prosecution.

The People argue that Defendant failed to preserve his contention that the weapons possession charge should have been severed, and that the possession count and the murder count were properly joined. The People also argue that the testimony of Detective Wilcox was relevant and admissible, that insufficient evidence was presented by Defendant relating to Defendant's contention that his oral admission was falsified, and Defendant failed to raise this issue on appeal. Additionally, the People argue that information regarding Detective Wilcox's conduct constitutes impeachment evidence, and therefore falls outside the scope of "newly discovered evidence." Finally, the Prosecution argues that even if the statement of Adrian Teasley can be considered *Brady* evidence and assuming that the prosecution had knowledge, the Defendant has failed to prove that had the evidence been turned over that there is a reasonable probability the result of the trial would have been different.

A CPL §440.10 motion is directed to the discretion of the trial court. People v. Burt, 246 A.D.2d 919 (3d Dept. 1998). The trial court may deny a motion to vacate without a hearing. See CPL §440.30. "Conclusory or speculative allegations do not warrant a hearing." People v. Burt, 246 A.D.2d 919 (3d Dept. 1998). On a CPL §440.10 motion, "the motion papers must contain sworn allegations . . . whether by the defendant or by another person or persons." CPL §440.30 (1).

In order for evidence to be considered *Brady* evidence it must be exculpatory, must be within the prosecution's control, and there must be a reasonable probability that the result of the trial would have been different. People v. Tucker, 40 AD.3d 1213, 1216 (3d Dept.

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2007). "[T]o be considered exculpatory and therefore subject to disclosure under *Brady*, withheld evidence must actually bear on the issue of the defendant's guilt or innocence." People v. Ross, 43 A.D.3d 567 (3d Dept. 2007)(quoting People v. Carter, 258 A.D. 2d 409 (1st Dept. 1999)). In addition, the evidence is not considered *Brady* evidence where it was known to the Defendant at the trial. Id.

"'Newly-discovered evidence, in order to be sufficient, must fulfill all the following requirements: (1) It must be such as will probably change the result if a new trial is granted; (2) it must have been discovered since the trial; (3) it must be such as could have not been discovered before the trial by the exercise of due diligence; (4) it must be material to the issue; (5) it must not be cumulative to the former issue; and, (6) it must not be merely impeaching or contradicting the former evidence.'" People v. Richards, 266 AD.2d 714 (3d Dept. 1999) (quoting People v. Salemi, 309 N.Y. 208, 215-216 (1955)). Newspaper articles are considered conclusory, and are therefore not sufficient for a motion to vacate. See People v. Montgomery, 188 AD.2d 677 (3d Dept. 1992). "[T]he discovery of new evidence which merely discredits a government witness and does not directly contradict the government's case ordinarily does not justify the grant of a new trial." U.S. v. Sposato, 446 F.2d 779 (2d Circuit 1971). Even if evidence would tend to impeach a witness' credibility, the evidence must also be found to have probably produced an acquittal. See id.

The right to the effective assistance of counsel is guaranteed by both the Federal and State Constitutions. U.S. CONST., 6TH AMEND.; N.Y. CONST., ART. I, §6. What constitutes effective assistance of counsel "varies according to the unique circumstances of each representation." People v. Baldi, 54 N.Y. 2d 137 (1981). One standard applied by the New York

State Court of Appeals has been whether the representation has rendered the "'trial a farce and a mockery of justice.'" Id. (quoting People v. Brown, 7 N.Y.2d 359 (1960)). "Trial tactics which terminate unsuccessfully do not automatically indicate ineffectiveness. So long as the evidence, the law, and the circumstances of a particular case, viewed in totality and as of the time of the representation, reveal that the attorney provided meaningful representation, the constitutional requirement will have been met." Id. at 146. Conclusory allegations that assistance of counsel was ineffective, without any factual basis are insufficient. See People v. Hammond, 137 A.D.2d 869 (3d Dept. 1988); see also People v. Woodard, 23 A.D.3d 771, 772 (3d Dept. 2005).

After full review of the record, this Court will deny Defendant's motion to vacate judgment of conviction without a hearing.

The Defendant's claims that the grand jury testimony of Adrian Teasley and a newspaper article regarding Detective Wilcox constituted *Brady* evidence that should have been disclosed prior to trial are unfounded. There is no proof that the evidence is either exculpatory or that the outcome of the trial would have been different had the evidence been disclosed. Additionally, with regards to the newspaper article, there is no proof that this piece of evidence was in the control of the People at or before the time of trial. Finally, Adrian Teasley's previous untrue statements came out at trial, as the witness recanted those statements at that time.

The "newly discovered evidence" set forth by Defendant is insufficient to warrant vacating judgment of conviction, as it does not meet the statutory requirements. The evidence of the newspaper articles is insufficient as it is conclusory, unproven hearsay evidence and would be useful only for impeachment purposes. In addition, it is not material to the issue as it was unrelated to the Defendant's trial and there is no proof that had this evidence been introduced at

trial, that there would have been a different result. The affidavit of Adrian LaMarche regarding testimony given by Adrian Teasley also fails to constitute "newly discovered evidence." First, these statements were recanted at trial, therefore this evidence was known to Defendant at the trial and is not "newly discovered." Additionally, the affidavit of Ms. LaMarche is based on hearsay evidence that is insufficient to support a CPL §440.10 motion. See People v. Stevens, 275 A.D.2d 902 (4th Dept. 2000).

Finally, Defendant has failed to show that representation of counsel has risen to the level of a constitutional violation.

All papers, including this Decision and Order, are being returned to the attorney for the People of the State of New York. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

SO ORDERED
Dated: April 8, 2008
Albany, New York

PAPERS CONSIDERED:
1. Notice of Motion to Vacate Judgment of Conviction, with Exhibits A -D3, dated January 22, 2008.
2. Affidavit of Sherodd Craft in Support of Motion to Vacate Judgment of Conviction, dated January 22, 2008.
3. Affirmation of Brett M. Knowles, in Opposition to the Pro Se Notice of Motion to Vacate Judgment, dated March 5, 2008.
4. Reply to Opposition, dated March 19, 2008.