

**People v Hamilton**

2011 NY Slip Op 32044(U)

July 13, 2011

Supreme Court, Kings County

Docket Number: 327/2005

Judge: Miriam Cyrulnik

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SUPREME COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: Part 38

PEOPLE OF THE STATE OF NEW YORK

-against-

ROHAN HAMILTON,

DECISION AND ORDER

Indictment No: 327/2005

Miriam Cyrulnik, J:

The defendant moves, pro se, to vacate his judgment of conviction, pursuant to Criminal Procedure Law (“CPL”) 440.10, alleging that his due process rights were violated, and that a Brady violation prevented him from having a fair trial. In deciding this motion, the court has considered the defendant’s motion papers, the People’s answer, and the defendant’s sur-reply, and the exhibits appended thereto, as well as the court file.

On December 13, 2006, after a jury trial, the defendant was convicted of Murder in the Second Degree and Criminal Possession of a Weapon in the Second Degree. On January 11, 2007, he was sentenced to a term of incarceration of 23 years to life and lifetime post release supervision on the murder charge, to run concurrently with 15 years incarceration and five years of post release supervision on the weapon charge. Both terms were to run consecutively to a two and one-half to five year sentence the defendant was already serving.

The defendant subsequently appealed his conviction, claiming that his Sixth Amendment right to confrontation was violated by the admission of certain evidence at trial without the testimony of a particular police officer, and that the introduction of autopsy photos was prejudicial. The defendant additionally submitted a pro se supplemental brief raising further claims of false evidence at trial, ineffective assistance by defense counsel, and judicial misconduct. On October 20, 2009, the Appellate Division, Second Department affirmed the defendant’s conviction, finding the

confrontation clause claims unpreserved for appeal, and his other arguments both without merit and unpreserved for appeal. People v. Hamilton, 66 AD 3d 921 (2d Dept 2009). The Court of Appeals then denied the defendant leave to appeal the decision on December 28, 2009. People v. Hamilton, 13 NY 3d 907 (2009).

The defendant now claims that he was denied due process by being coerced into providing a statement to a police detective. He also contends that the same detective fabricated evidence against him, and was unavailable for cross examination at trial, thus violating his right to confrontation. The defendant further argues that the People withheld Brady material which would have resulted in a different outcome of his trial. For the reasons addressed herein, the defendant's motion to vacate his judgment of conviction is denied.

DEFENDANT'S ARGUMENTS REGARDING THE COERCION  
OF HIS STATEMENTS ARE PROCEDURALLY BARRED

The defendant's arguments that he was coerced to provide a statement to the police, and that they falsified evidence against him, along with his contention that his right to confront witnesses at trial was violated, are all procedurally barred.

First, the Appellate Division, Second Department has already considered the defendant's contentions regarding the absence of Detective Hernandez's testimony at trial, and ruled that his claim of a violation of his right to confront his accusers was not preserved for appeal, as it applied to the introduction into evidence of the fingerprint and palm prints, which was not objected to by the defendant at trial. Additionally, the defendant already raised the claims of false evidence on appeal in his supplemental brief, and they were found to be unpreserved and without merit. Therefore, he is barred from reasserting such claims now. See CPL 440.10(2)(a). See People v. Hyman, 51 AD

3d 689 (2d Dept 2008), lv denied 10 NY3d 960 (2008) (finding defendant's claims which had already been raised in a supplemental pro se appellate brief not properly before the court pursuant to CPL 440.10[2][a) and without merit).

In any event, as the People correctly note, there were sufficient facts regarding these issues established as a part of the record which enabled the defendant to have raised any such claims in his initial appeal, pursuant to CPL 440.10(2)(c). Even if additional challenges pertaining to the custodial treatment of the defendant by Detective Hernandez, or any other police officer or detective, were not specifically ruled on by the Appellate Division, Second Department, a pre-trial Huntley/Dunaway hearing was held in this matter, affording the defendant a full opportunity to litigate the issue of the voluntariness of his three statements.<sup>1</sup> While it was Detective Dryver, and not Detective Hernandez, who testified at the Huntley/Dunaway hearing, the defendant was still afforded an opportunity to question the detective about the circumstances of the interrogation. Moreover, Detective Hernandez's absence from testifying at the pre-trial hearing would have also been a part of the record.

Therefore, since any and all of these issues would have been part of the court record from the Huntley/Dunaway hearing, and the defendant has not demonstrated why he did not previously raise these claims on appeal, they are procedurally barred under CPL 440.10(2)(c) as well.<sup>2</sup> See People v. Kwok, 51 AD 3d 814, 815 (2d Dept 2008) (holding that since "facts sufficient to have permitted adequate review of these claims on a direct appeal from the judgment appear on the record of the

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<sup>1</sup> In any event, none of those statements were introduced into evidence at trial by the People, negating any prejudicial impact on the defendant.

<sup>2</sup> The court notes that the defendant could have placed any other applicable facts on the record during the Huntley/Dunaway hearing as well, but failed to do so. See CPL 440.10(3)(a).

plea proceedings,” defendant is “barred from raising them on a motion to vacate the judgment” without showing that his “failure to take an appeal and raise these claims was justifiable”). See also People v. Muhammad, 2009 NY Slip Op 31474U (Sup Ct, Kings County 2009) (holding that defendant’s claim was barred under CPL 440.10[2][c], because he unjustifiably failed to raise it on direct appeal, or in his previous 440 motions); People v. Mackey, 2007 NY Slip Op 50477U, 2 (Sup Ct, Kings County 2007).

Furthermore, as the People point out, the defendant’s arguments on this issue are unsupported by any substantial allegations of fact which would corroborate his claims, and there is no “reasonable possibility that such allegation[s]” could be true. CPL 440.30(4)(d). The defendant’s bald assertions about his mistreatment by the police detectives and planting of falsified evidence are without factual support or credibility, particularly given the fact that they were already litigated and disposed of, either before trial or on appeal. See CPL 440.30(4)(b),(d). See also People v. Lake, 213 AD 2d 494, 496 (2d Dept 1995), lv denied 86 NY 2d 737 (1995) (upholding denial of portion of defendant’s CPL 440 motion that lacked “sworn allegations substantiating or tending to substantiate” his claims of a Brady violation). “It is well settled that conclusory statements and conjecture do not constitute sworn allegations of fact as they are mere claims and surmise.” People v. Fratello, 13 Misc 3d 1231A (Sup Ct, Bronx County 2006), lv denied 2007 NY App Div LEXIS 4426 (1<sup>st</sup> Dept 2007).

Accordingly, the defendant’s claims are procedurally barred.

#### DEFENDANT’S ARGUMENTS REGARDING THE WITHHOLDING OF EVIDENCE

#### AND BRADY MATERIAL ARE PROCEDURALLY BARRED

The defendant’s arguments pertaining to the People’s alleged withholding of Brady material are likewise procedurally barred. The defendant offers nothing beyond mere speculation to support

his claims of the existence of an earlier lab report and an additional photograph. Moreover, the defendant makes the further assumption that if such supposed evidence existed, not only would it be favorable to his case, but it would have changed the entire outcome of the trial. Such conclusory allegations are lacking the underlying factual and substantiated foundation required with the filing of a CPL 440 motion. See CPL 440.30(4)(b); see also People v. Lake, supra; People v. Wright, 12 Misc 3d 1164A (Sup Ct, Kings County 2006) (denying “defendant's claim that the prosecution elicited perjured testimony and submitted a ‘doctored’ photograph to the jury” as “barred and equally unsubstantiated” pursuant to CPL 440.30[4][b]).

Additionally, the defendant has already raised the claims of the introduction of false evidence in his supplemental appellate brief; those unsubstantiated allegations were rejected by the Appellate Division, Second Department in the context of an ineffective assistance of counsel claim. Therefore, for the reasons outlined above, the defendant is barred from raising the same contentions now pursuant to CPL 440.10(2)(a).

Finally, the defendant’s arguments regarding witness credibility are without merit. The jury had an opportunity to hear and evaluate the testimony of the criminalist, Ms. Jean, along with all other witnesses, as well as any evidence admitted in conjunction with that testimony. The court is not convinced that such testimony presented significant discrepancies, let alone the “perjury” suggested by the defendant. Moreover, given the overwhelming evidence of guilt present in this case, the defendant’s continued claims about a change in the outcome of the trial had different evidence been presented or revealed in connection with the testimony are simply without merit.

Accordingly, the defendant’s motion to vacate his judgment is denied without a hearing.

The defendant’s right to an appeal from the order determining this motion is not automatic

except in the single instance where the motion was made under CPL 440.30 (1)(a) for forensic DNA testing of evidence. For all other motions under article 440, the defendant must apply to a Justice of the Appellate Division for a certificate granting leave to appeal. This application must be filed within 30 days after the defendant has been served by the District Attorney or the court with the court order denying this motion.

The application must contain the defendant's name and address, indictment number, the questions of law or fact which the defendant believes ought to be reviewed and a statement that no prior application for such certificate has been made. The defendant must include a copy of the court order and a copy of any opinion of the court. In addition, the defendant must serve a copy of his application on the District Attorney.

This opinion constitutes the decision and order of the Court.

Dated: July 13, 2011  
Brooklyn, New York



Miriam Cyrulnik  
A.J.S.C.

