

People v Biggs

2015 NY Slip Op 30766(U)

May 5, 2015

Supreme Court, Kings County

Docket Number: 4191/2000

Judge: Mark R. Dwyer

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM PART 26

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THE PEOPLE OF THE STATE OF NEW YORK

OPINION AND ORDER

- against -

Ind. No. 4191/2000

BRUCE BIGGS,

DEFENDANT.

-----X

DWYER, J.:

Defendant Bruce Biggs moves, pursuant to CPL Section 440.10, for an order setting aside a judgement dated November 16, 2005. By that judgment defendant convicted of two counts of Manslaughter in the Second Degree and was sentenced to consecutive prison terms of from 7 ½ to 15 years. For the reasons noted below, defendant's motion is denied.

I

Defendant shot and killed Henry Carter and 14 year old Marion Mabry on February 19,1999. By Kings County Indictment Number 1581/99 defendant was charged with intentional murder, with depraved indifference murder, and on related weapons counts. At defendant's first trial, the intentional murder counts were dismissed and defendant was acquitted of depraved indifference murder. However, the jury hung on two counts of Manslaughter in the Second Degree that had been submitted as lesser included offenses.

The people thereafter obtained a second indictment, Indictment Number 4191/2000, charging defendant with two counts each of Manslaughter in the First

and Second Degrees. At defendant's second trial he was convicted on the first degree counts. The conviction was reversed on double jeopardy grounds by the Court of Appeals. People v. Biggs, 1 NY3d 225 (2003).

In 2005 defendant was tried yet again and was convicted on two counts of Manslaughter in the Second Degree. The conviction was affirmed by the second Department in 2008. People v. Biggs, 52 AD2d 620. Leave to appeal, and eventually a certiorari petition, were both denied.

Even before his appeal, defendant made his first post-judgment motion, on grounds not pertinent here. The motion was denied in 2006. Defendant's second post-judgment motion, also made on grounds not pertinent here, was denied in 2009. Defendant's federal habeas corpus petition and his state coram nobis application were also denied, in 2009 and 2011 respectively.

In 2011 defendant's third post-judgment motion alleged that the People knowingly presented false testimony from one Detective Sloan concerning a statement defendant made after his arrest. That motion was denied on the ground that defendant's claims could have been raised not only on appeal, but also in defendant's earlier post-judgment motions. The court also found that defendant's claims were not supported by any credible evidence.

Defendant has now again moved, in papers dated January 22, 2015, for an order setting aside the judgment. Defendant argues that the prosecution was guilty of misconduct that denied defendant due process, in that it knowingly presented false testimony from Detective Sloan. Defendant asserts as well that he is actually innocent of the charges.

II

Defendant's first claim could, as the People argue, have been raised on direct appeal. Detective Sloan testified that he gave defendant the Miranda warnings and that defendant made certain statements. Those statements conceded little; the most inculpatory was defendant's claim that he did not intend to kill young Ms. Mabry. In any event, everything that defendant relies on to assert that this was false testimony, and that the People knew it, was part of the record on appeal. Defendant's claim was not presented on appeal, and is therefore waived. This court therefore "must" reject defendant's claim. CPL Section 440.10 (2) (c).

Further, defendant did not raise this claim in his first two post-judgment motions, and an apparently identical claim was included in his third motion and was rejected. The court does not believe that the interest of justice calls for review of defendant's claim here, or that good cause has been shown for defendant's earlier defaults. Defendant's claim is therefore rejected on that basis as well. CPL Section 440.10 (3) (b), (3) (c).

The court is also not at all impressed with defendant's claim, on the merits. There is no reason to doubt Detective Sloan's unrebutted testimony that he gave defendant the Miranda warnings. Defendant seems to rely on the fact that in a later recorded interview, an Assistant District Attorney gave the warnings. Quite obviously, that is no proof that the detective did not do so as well.

And the claim that the detective lied about what defendant admitted makes little sense. Detective Sloan did not assert that defendant conceded his guilt. The most damning admission he recounted was defendant's assertion that he did not intend to kill the younger victim. This court does not find that the nature of the

statements attributed to defendant is at all consistent with a dishonest detective's effort to pin a false confession on a suspect.

Equally scarce is proof for defendant's assertion that the prosecution presented the detective's testimony, "knowing" it to be false. There is not even a circumstantial fact, much less direct proof, of defendant's charge. For procedural reasons, and in the alternative for lack of substantiation, defendant's first claim is rejected.

III

Defendant's second claim is that he is actually innocent. As far as this court can see, defendant has never before raised this claim. But if defendant made a substantial showing that he is actually innocent, this court would never reject his claim of innocence because of his failure to raise the claim in prior proceedings. The court will therefore address the claim on the merits.

Unfortunately for defendant, his claim has no merit. Defendant's assertions of innocence are based on his own undetailed and unsupported protestations, and on his unsupported proposition that Detective Sloan lied about defendant's statement. This is by no means a sufficient showing to earn defendant a finding that he is innocent.

A note must be added lest irony not be respected. Defendant's claim of innocence references the recorded statement he made to an Assistant District Attorney after his statement to the detective. The People have submitted a transcript of the statement, and there is nothing exculpatory in it except defendant's bare denials. But in fact defendant moved before trial to suppress the

statement, and that motion was granted. It ill behooves defendant now to claim that a statement he precluded is in fact a key indicator of his innocence.

IV

Defendant asks that the court appoint a lawyer to assist him in presenting his claims. This court does not believe that defendant's position has sufficient merit to justify such an appointment. Defendant also seeks an evidentiary hearing on his claims. This court does not believe that defendant has presented new information that should be considered at a hearing.

* * *

For the reasons noted above, defendant's motion is denied.

ENTER:

Mark Dwyer
MARK DWYER
Justice of the Supreme Court

Dated: May 5, 2015

ENTERED
MAY 11 2015
NANCY T. SUNSHINE
COUNTY CLERK