

P R E S E N T:

IND - 70001 - 91

HON. HOWARD E. STURIM

MOTION SEQ. NO. C-005
IND. NO. / SCI NO. 77625-91

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

GARY LAWRENCE,

Defendant.

)
) Anne Donnelly
) District Attorney
) Nassau County
) Mineola, NY 11501
) By: ADA Barbara Kornblau
)

)
) Ilan Maazzel, Esq.
) Scout Katovich, Esq.
) Emery, Celli, Brinckerhoff, Abady,
) Ward and Maazel LLP
) 600 Fifth Avenue, 10th Floor
) New York, NY, 10020

The defendant moves this court pursuant to CPL §440.10 for an order vacating his judgement of conviction. The District Attorney opposed the motion and requests a hearing on the issues presented.

The defendant and his two co-defendants were charged based upon two incidents. The first was a murder outside of an Arby's restaurant in 1990, and the second involved an attempted robbery in Freeport in 1991. The defendant was arrested, along with his co-defendants, after the attempted robbery. While in custody and after being advised his *Miranda* rights, the defendant gave a written statement to homicide detectives. The statement detailed his role in the murder, wherein he admitted being at the scene of the murder with his co-defendants, but stated that co-defendant David Liles shot the victim. The defendant was identified in a lineup by one eyewitness (out of four who viewed the lineup) as being present at the scene next to the shooter.

The defendant was convicted after trial of one count of murder in the second degree, two counts of attempted robbery in the first degree, two counts of criminal possession of a weapon in the third degree, and one count of criminal possession of stolen property in the third degree. He was sentenced after trial to twenty-five years to life for murder in the second degree, seven and one half to fifteen years for each count of attempted robbery in the first degree and criminal possession of a weapon in the second degree, and three and one-half to seven years on each

criminal possession of a weapon in the third degree charge and the possession of stolen property count.

In 2019, the Nassau County District Attorney's Office Conviction Integrity Division (CID) conducted a review of the defendant's conviction based upon claims raised in a motion by co-defendant Christopher Ellis. During the investigation, CID discovered memo book notes made by Detective Richard Wells, the lead homicide detective in the case. The memo book notes, which totaled approximately fifty (50) pages, were never turned over to defendant or the co-defendants prior to their respective trials. The notes, which the People concede are exculpatory in nature, contain information regarding witness interviews, other potential suspects, and previously undisclosed details of the murder investigation. It is noted Ellis' motion for vacatur under CPL §440.10 was granted by the Hon. Patricia Harrington on July 22, 2021 based upon the People's failure to disclose these materials prior to trial.

In 2020, a newly discovered NCPD Homicide file containing additional undisclosed records of approximately two hundred and thirty four (234) pages was turned over to the defendant's attorneys. The disclosure was made after the vacatur of co-defendant's Ellis conviction. The file was labeled "Unnamed Homicide Squad Investigation File." According to the People, this file contained "additional notes and other documents pertaining to potential suspects and leads" (People's Affirmation, p. 82), and was discovered as they were copying the entire original homicide file to turn over in discovery. This file included statements identifying other suspects in the murder case and leads regarding these additional suspects, as well as additional witnesses.

The defendant argues that the People's failure to disclose these records is a clear *Brady* violation which requires vacatur under CPL §440.10. The People concede that they violated *Brady* but argue that the proper remedy is a hearing and not vacatur. They contest the materiality of the newly discovered materials. A successful *Brady* claim rests on a showing that (1) the evidence is favorable to the defendant because it is either exculpatory or impeaching in

nature; (2) the evidence was suppressed by the prosecution; and (3) prejudice arose because the suppressed evidence was material. (People v Rong He, 34 NY3d 956, 958 [2019]). The People do not contest that the first two prongs of that analysis.

The test of materiality is whether there is a reasonable probability that had the information been disclosed to the defense, the result would have been different (People v Ulett, 33 NY3d 512, 514 [2019]). The defendant must make a showing that "favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. Ulett at 520. It is undisputed that the memo book notes contain information about other potential suspects. The People's broad obligation to disclose under Brady includes "meaningful access to favorable witnesses" (Rong He at 958, quoting Strickler v Greene, 527 US at 281). If nothing else, the contents would have created leads, additional potential witnesses, and theories to potentially aid in the defense at trial. This is compounded by the over 200 pages of additional materials turned over subsequent to the vacatur of Ellis's conviction. The People concede these materials contain information regarding other suspects and leads, but state that this information was included in the memo book pages previously disclosed. From this Court's review of the unnamed file, it appears that not only does it contain previously disclosed information, but expands on it with additional information regarding witnesses and potential suspects. It is clear that access to this information could have allowed the defendant to develop additional facts, which in turn could have aided him in establishing additional or alternative theories to support his defense. Rong He at 959.

Vacatur is required where a judgement was obtained in violation of a right of the defendant under the constitution of this state or of the United States. CPL §440.10(1)(h). The evidence establishing the defendant's guilt at trial cannot be considered overwhelming. It consisted of an identification by a single eyewitness who admitted having consumed six or seven alcoholic beverages prior to the incident, coupled with the defendant's written statement. No forensic evidence directly tied him to the murder. The defendant need only show that the favorable evidence could reasonably be taken to put the whole case in such a different light as to

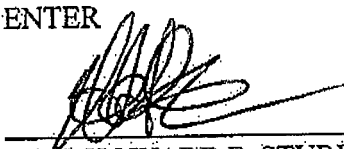
undermine confidence in the verdict. Ulett at 520.

This Court finds that given the information contained in the memo book notes and the unnamed homicide file, the sheer volume thereof, the new suspects, potential witnesses, and leads contained therein, the undisclosed evidence is clearly material. The Brady violations were substantial, and because of them the People failed to provide access to meaningful witnesses and information. The notes, and the subsequent disclosure, could have provided "leads for additional admissible evidence and avenues for alternative theories for the defense." Ulett at 521.

There is no need to conduct a hearing as in this Court's view there are no material facts to be litigated. The defendant's motion for vacatur of his conviction and sentence under CPL §440.10 is granted based on the *Brady* violations and a new trial is ordered. In light of this decision this Court need not reach the defendant's motion for vacatur based upon his claim of actual innocence.

SO ORDERED.

ENTER


HON. HOWARD E. STURIM, A.J.S.C.

Dated: January 5, 2023

