

New Jersey Supreme Court Reverses Murder Conviction

February 11, 2019 | by Matthew Troiano

On February 4, 2019, in the matter of *State v. William Brown*, the New Jersey Supreme Court reversed two murder convictions, based in large part on the State's failure to turn over material evidence to the defense until the trial was underway.

The victim in the matter had been shot in his Trenton home in September 2008. He later died. The matter proceeded to trial in January 2015, more than six years after the victim's death. A week into the trial, after both the State and defense counsel made opening statements, and after the completion of testimony of four State's witnesses, the prosecutor turned over to defense counsel nineteen reports that were in the State's possession but had not previously been provided to Defendants. The reports concerned facts that had been already discussed in the testimony of the investigating officers who had since completed their testimony. For example, one of the reports detailed an extensive search of the area surrounding the incident, not simply the path that had been testified to and which led to a piece of incriminating forensic evidence against one of the defendants. In addition, the records included various statements allegedly made by the victim's wife, which would not only impeach her credibility, but also support a third party guilt defense focused on her potential involvement in the crime.

Upon receipt of the late discovery, the Defendants moved to dismiss the indictment with prejudice, claiming a *Brady* violation. However, the trial court did not resolve the dismissal motion, and the case continued. At the conclusion of the trial, a jury convicted defendants of murder. The Appellate Division affirmed.

The New Jersey Supreme Court reversed the convictions and remanded the matter for a new trial. The Court concluded that the State's failure to produce the nineteen discovery violated Defendants' due process rights under *Brady v. Maryland*. In *Brady*, the United States Supreme Court ruled that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or

bad faith of the prosecution.” Three essential elements must be considered to determine whether a *Brady* violation has occurred, and thus, the defendant is deprived of his/her constitutional right to a fair trial: (1) the evidence at issue must be favorable to the accused, either as exculpatory or impeachment evidence; (2) the State must have suppressed the evidence, either purposely or inadvertently; and (3) the evidence must be material to the defendant’s case.

Here, the Court determined that the first factor was satisfied as the withheld evidence was supportive of a third party guilty defense. It was also contradictory to testimony that had already been given by State’s witnesses. Similarly, the Court stated that the second factor was satisfied due to the State’s acknowledgement that it had possession of the reports. As to the third factor, the Court determined that the withheld evidence was material, in that there was a “reasonable probability” that timely production of the withheld evidence would have led to a different result at trial. The Court summed up the trial by stating that the “circumstantial evidence of defendants’ guilt was . . . assailable.”

The Court also based their “materiality” finding on the other evidentiary decisions made by the trial court. During the course of trial, the trial court made several evidentiary rulings that were critical to the Court’s analysis. One ruling by the trial court permitted the murder victim’s dying declaration, which was testified to by the victim’s wife. The wife testified that the victim identified the two defendants after he was shot and prior to his death. This ruling was a reversal of a previous judge’s pretrial ruling that excluded the dying declaration, wherein that judge found that the victim was not credible.

A second ruling barred the use of a police officer’s affidavit – as a prior recollection recorded – that had been used in multiple search warrant applications. Defense counsel had sought to use the excluded affidavit to impeach the victim’s wife, and also to support a third-party guilt defense. The trial court ruled that the affidavit was inadmissible as untrustworthy.

As for the victim’s wife’s testimony regarding his dying declaration, the Court determined that the trial court did not abuse its discretion in overturning a pretrial ruling excluding the victim’s dying declaration, and allowing the declaration to be admitted at trial. However, the Court noted that the trial court’s decision to admit the dying declaration occurred one week into the trial, after defense counsel gave opening statements revealing their trial strategy, and after four State witnesses had testified.

Although it was proper to admit the dying declaration, the timing of the decision to admit it was highly prejudicial to the defense.

The timing of the admission of the dying declaration, and its prejudicial effect, was also compounded by the exclusion of the police officer's affidavit as a prior recollection recorded. The Court determined that the trial court erred in excluding the affidavit, and that error deprived defendants of critical evidence. Specifically, the Court determined that admission of the affidavit could have reduced the impact of the dying declaration. The information in the affidavit undermined the credibility of the victim's wife, and raised the possibility of her involvement in her husband's murder, which would be evidence of third-party guilt. The Court disagreed with the decision of the trial court, and concluded that the affidavit should have been admissible under N.J.R.E. 803(c)(5), the hearsay exception for a recorded recollection.

Ultimately, the Court reversed the defendants' convictions and remanded for a new trial, finding that the defendants were deprived of a fair trial. However, the Court determined that the violation did not warrant dismissal of the indictment. This determination was due to the fact that the Court found no evidence or allegation that the State acted in bad faith or intentionally in failing to timely produce the discoverable material.