Withholding Of Exculpatory Evidence At Pre-Trial Detention Hearing

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Pursuant to the 2017 Criminal Justice Reform Act, if the State seeks to detain a defendant pending the outcome of the case, they are required to provide, among other items, "all exculpatory evidence" before a detention hearing. In a December 11, 2018 decision by the New Jersey Supreme Court, State v. Hyppolite, the Court addressed how a trial court is to deal with the State's withholding of such evidence during a pretrial detention hearing that resulted in the detention of the defendant. In what the Court described as a "novel" issue, they laid out the proper framework for a trial court to review the impact of withheld evidence.

The relevant facts and procedural history are as follows: On March 29, 2017, the victim was shot and subsequently pronounced dead. A few hours after the shooting, a witness provided a statement to police. In this statement, the witness indicated that he did not see the shooter. This statement was inconsistent with a second statement the witness provided to police on June 8, 2017. In this second statement, the witness identified the Defendant, indicated that he believed the Defendant had been carrying a firearm in his hooded sweatshirt, described seeing a brief conversation between the Defendant and victim before hearing a gunshot. The witness said that he ran away as he heard several more gunshots. The witness stated that he had known the Defendant for about seven years and identified him from a photo array.

On June 20, 2017, the Defendant was arrested on murder and weapons charges. The affidavit of probable cause in support of the charges stated that "an eyewitness . . . positively identified [the Defendant] as the actor who" killed the victim.

The State sought to have the Defendant detained pending trial, and filed a Motion for Pre-Trial Detention, which then resulted in a detention hearing before a trial court. Prior to the detention hearing, the State provided defense counsel with the recording of the witness's second statement to

police, wherein he identified the Defendant. The State did not provide the witness's first statement to police, where no identification was made.

The trial court ruled that Defendant should be detained. Approximately two months later, the Defendant was indicted. Thereafter, the State provided additional discovery to defense counsel. Contained within these materials was, among other things, the witness's first statement to police. Upon receipt of this new discovery, defense counsel sought to re-open the detention hearing, claiming that exculpatory evidence had been withheld. Defense counsel also sought to have the Defendant released because of this discovery violation.

The trial court agreed that the withheld evidence was exculpatory, and that the State violated the relevant Court Rules by not disclosing the information prior to the detention hearing. However, the trial court determined that the evidence was not material and would not have had a "reasonable probability" of changing the outcome of the detention hearing. As such, the trial court denied the application to reopen the detention hearing. The Appellate Division denied Defendant's motion for leave to appeal.

The New Jersey Supreme Court agreed to hear the case. In their ruling, the Court stressed that the court rules regarding pretrial detention motions require the prosecutor to provide the defendant, among other items, with "all exculpatory evidence," which must be done "no later than 24 hours before the detention hearing." The Court rejected the argument that only evidence that is "clearly exculpatory" was necessary to be disclosed to the defendant. The Court also rejected the argument that a defendant should be released every time exculpatory evidence is withheld. On the other hand, the Court rejected the argument that a new hearing should be required whenever there is such a discovery violation.

With regard to the standard for determining whether to reopen detention hearings based on the failure of the State to provide exculpatory evidence, the Court determined that the traditional materiality standard (a "reasonable probability" standard) was not ideal. Because detention hearings are abbreviated proceedings, this standard would be "impractical and set the bar too high."

The Court ruled that when exculpatory evidence is not provided prior to a detention hearing, the trial court should use a “modified materiality standard” to decide whether to reopen the hearing. This standard would ask whether there is a “reasonable possibility” that the result of the detention hearing would have been different had the evidence been provided. If a reasonable probability exists, then the hearing should be reopened. The Court placed the burden on the State to establish that a new hearing is not required. The State would have to establish that there is no reasonable possibility that withheld evidence would have changed the outcome of the hearing. If the State fails to make this showing, the detention hearing will be reopened.