SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0194-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CHRISTOPHER HILL,

Defendant-Appellant.

Submitted December 19, 2017 – Decided January 10, 2018

Before Judges Leone and Mawla.

On appeal from Superior Court of New Jersey, Law Division, Ocean County, Indictment No. 85-03-0176.

Joseph E. Krakora, Public Defender, attorney for appellant (David A. Gies, Designated Counsel, on the brief).

Joseph D. Coronato, Ocean County Prosecutor, attorney for respondent (Samuel Marzarella, Supervising Assistant Prosecutor, of counsel; William Kyle Meighan, Senior Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Christopher Hill appeals from a July 28, 2015 order denying his motion for a new trial based on newly discovered evidence. We affirm.

In 1985, defendant was tried and convicted by a jury of first-degree murder. We affirmed his conviction on appeal. State v. Hill, No. A-2925-85 (App. Div. May 2, 1988) (slip. op. at 2).

The following facts are taken from the record. On November 2, 1984, the lifeless body of Arlene Carty was found by Stafford Township Police Sergeant Gregory McNally on Hay Road. Sergeant McNally had been dispatched to the scene because the victim's pocketbook had been found on Hay Road. He located the victim's body near the road, laying beneath cardboard boxes. She had been severely beaten with a two-by-four piece of lumber that was later found floating in a pond approximately three-tenths of a mile from the body.

Detective Jeffrey Thompson arrived at the scene and testified at trial that he discovered a button in one of the footprints near the victim. A splinter of wood was found in the victim's neck that matched the piece of lumber.

Dr. Ramesh Mahapatro, a board certified pathologist, performed an autopsy on the victim, and was also called as a witness for the State. He testified the autopsy revealed the cause of death to be asphyxia caused by a combination of blood in

the lungs, the obstruction of the epiglottis by the fractured denture, and the compression of the hyoid bone.

Sergeant William Sheehan executed a search warrant at defendant's home. The shirt, the pants, the two-by-four piece of lumber, and a wood splinter were sent to the Federal Bureau of Investigation (FBI) Lab. FBI Special Agent Robert Webb analyzed the shirt recovered from defendant's home and the button recovered at the scene.

Special Agent Webb testified a button was missing from the right cuff of the shirt, and that there was a torn area where the button should be located. He tested the button from the scene and another button on the shirt and testified:

> It's my opinion that the button [found at the scene], which I'm holding before you, matches in its physical characteristics, its color, its texture and its chemical composition to the button I removed as a control sample from [the shirt found in defendant's home]. Therefore, the [button found at the scene] either originated from this shirt or from some other source which has buttons on it, and the buttons on this other source would have to have precisely the same physical characteristics, color, texture and chemical composition as the buttons on [the shirt].

Special Agent Edward L. Burwitz, a laboratory examiner for the FBI, also testified. He matched hairs from the victim's head with hair found on the defendant's pants. Special Agent Burwitz

also analyzed and compared the yarns and threads from defendant's shirt to those found on the button at the scene.

In addition to the evidence gathered by police, defendant also confessed to the murder. The jury learned that after being read his Miranda[1] rights, defendant admitted he met the victim at a bar in Tuckerton on November 1, 1984, and that he had been drinking. Defendant admitted the victim left the bar alone. Shortly after she departed, defendant left the bar with a co-worker in defendant's truck. As defendant was driving along a highway, he observed the victim hitchhiking, and picked her up at his co-worker's request. Defendant then dropped off his co-worker and drove towards the victim's home.

Defendant admitted having an argument with the victim because she rebuffed his sexual advances. He stated the victim spilled beer on defendant and cursed at him. He then drove down Hay Road, pulled off to the side, and struck her in the face. After the victim exited the truck, defendant then struck her several times with a two-by-four. Defendant told police he was sure the victim was dead, and that he covered her body with boxes.

In 2014, defendant received a letter from the United States Department of Justice indicating allegations were made of improper

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

practices by certain FBI laboratory examiners. Included was an Independent Case Review Report regarding Special Agent Webb, which stated:

> Robert Webb worked as an examiner in the Materials Analysis Unit from 1976 through 1991, when he transferred out of the Laboratory. As is discussed in Part Three, Section B, we conclude that, in the VANPAC case, Webb stated conclusions about the common origin of certain tape, paint, sealant, and glue more strongly than was justified by the result of his examinations and the background data. We find that Webb did not attempt to fabricate evidence or to present biased conclusions. As part of this investigation, we did not undertake a general review of Webb's work in cases other than VANPAC. We recommend that another qualified examiner review any analytical work by Webb that is to be used as a basis for future testimony.

Defendant filed a motion for a new trial based on this newly discovered evidence. The motion judge denied defendant's motion.

On appeal, defendant argues the following point:

> I. THE ONLY EVIDENCE CONNECTING THE DEFENDANT'S PRESENCE TO THE CRIME SCENE WHICH COULD CORROBORATE THE DEFENDANT'S EXTRAJUDICIAL CONFESSION IS THE DISCREDITED TESTIMONY OF THE STATE'S EXPERT WITNESS.

We begin by reciting our standard of review. "A trial court's ruling on a motion for a new trial 'shall not be reversed unless it clearly appears that there was a miscarriage of justice under the law.'" State v. Armour, 446 N.J. Super. 295, 305 (App. Div.) (quoting R. 2:10-1), certif. denied, 228 N.J. 239 (2016).

"Similarly, pursuant to Rule 3:20-1, the trial judge shall not set aside a jury verdict unless 'it clearly and convincingly appears that there was a manifest denial of justice under the law.'" Id. at 305-06. "[A] motion for a new trial is addressed to the sound discretion of the trial judge, and the exercise of that discretion will not be interfered with on appeal unless a clear abuse of discretion has been shown." Id. at 306 (alteration in original) (quoting State v. Russo, 333 N.J. Super. 119, 137 (App. Div. 2000)).

On appeal, defendant argues that other than his confession, the only evidence placing him at the scene is the faulty evidence proffered by Special Agent Webb. Defendant asserts the State must prove each element of the offense through evidence independent of his confession or through means that establish his confession was trustworthy. State in the Interest of J.F., 286 N.J. Super. 89, 101 (App. Div. 1995). Defendant argues because Special Agent Webb's testimony was discredited, the State presented no evidence corroborating defendant's confession to sustain a conviction.

Rule 3:20-1 states: "The trial judge on defendant's motion may grant the defendant a new trial if required in the interest of justice." The Supreme Court has stated:

> [T]o qualify as newly discovered evidence entitling a party to a new trial, the new evidence must be (1) material to the issue and

> not merely cumulative or impeaching or contradictory; (2) discovered since the trial and not discoverable by reasonable diligence beforehand; and (3) of the sort that would probably change the jury's verdict if a new trial were granted.
>
> [State v. Carter, 85 N.J. 300, 314 (1981).]

"To sustain a motion for a new trial the proffered evidence must meet all three aspects of the test." State v. Artis, 36 N.J. 538, 541 (1962) (citing State v. Johnson, 34 N.J. 212, 223 (1961)).

Aside from Special Agent Webb's testimony, the State offered the independent assessment of the button and evidence recovered at the scene through the testimony of Special Agent Burwitz. Specifically, he testified:

> So, looking at the various items of clothing that contained buttons, I found that [the shirt found in defendant's home], this shirt, in fact, was missing a button, and I also took a sample of the fabric that composes [that shirt], as well as sewing thread from another button, to compare with the material that's now present in [the sample of yarns and threads removed from the button found at the scene]. And I found that yarns, red and black yarns, from [the shirt] and the yarns in [the button sample] are alike in color, construction, composition and diameter. Likewise, the sewing thread that I removed from [the shirt] is like the sewing thread in [the button sample] in regard to construction, color, composition and diameter. So it's my conclusion that the yarns and thread in [the button sample] could have originated from [the shirt found in defendant's home].

Furthermore, defendant admitted in his post-Miranda statements to police that he hit the victim with a two-by-four piece of lumber several times, covered her with boxes, and threw the lumber out of his truck window while driving on the road near the scene. These admissions were independently corroborated by police. Indeed, Captain Floyd Cranmer testified the two-by-four was found in a pond near the scene with no foot prints leading to its location, indicating it could have been thrown from the driver's side window. Sergeant McNally testified the victim's body was also found, as defendant described, covered with cardboard boxes.

Defendant also stated in his confession the victim was drinking Old Milwaukee beer, which he had in his truck. Defendant's co-worker testified at trial that he left a 12-pack of Old Milwaukee beer in defendant's truck when defendant dropped him off at his home the night of the incident. Also, Detective Thompson testified an open twelve-pack of Old Milwaukee beer was found at the murder scene.

The motion judge considered the evidence in light of the parties' arguments and concluded:

> [A]lthough defendant presented reasonable points regarding defendant's Motion for New Trial on the basis of newly-discovered evidence, defendant does not meet all three elements of State v. Carter, or R. 3:20-1.

> The court[] finds that evidence, specifically the results of the FBI's review of . . . Webb's work, would probably not change the jury's verdict if a new trial were granted. The court agrees that the State's evidence against the defendant is likely strong enough to sustain any new information from . . . Webb: As the State points out, defendant had been seen in a tavern in Tuckerton drinking with the victim and with his arm around her. The State asserts that the last person seen with the victim was defendant. Defendant confessed to killing the victim with a two by four and to leaving her body in the location where she was found. Finally, the State asserts that . . . Webb's testimony was that the button found at the scene matched the buttons on defendant's shirt or from a source with identical buttons. Overall, the court finds that evidence of . . . Webb's testimony regarding the button and overstating the value of such evidence would probably not change a jury's verdict after considering all other evidence presented by the State. Therefore, the court finds that defendant does not me[e]t the elements to establish that a Motion for a New Trial is warranted.

We agree. Defendant's argument that, absent Special Agent Webb's testimony, the State presented no evidence corroborating his confession lacks merit. The record contains substantial corroborating evidence to support defendant's conviction. The outcome would not have changed had a new trial been granted with the State not presenting Special Agent Webb's testimony. The motion judge did not abuse his discretion by denying defendant's motion for a new trial.

Affirmed.