

SUPREME COURT - STATE OF NEW YORK  
CRIMINAL TERM PART K-11 QUEENS COUNTY  
125-01 QUEENS BOULEVARD  
KEW GARDENS, NY 11415

P R E S E N T :

HONORABLE JOSEPH A. ZAYAS  
ACTING JUSTICE

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

ROBERT JONES,

Defendant.

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DECISION AND  
ORDER OF THE  
COURT

Ind. No. 4811/1994

Defendant, Robert Jones, was convicted after a jury trial of murdering Antoine Stone, who, prior to his death, had been preaching to drug dealers on a street corner. He now moves pursuant to Criminal Procedure Law § 440.10 (1) (b), (c), (d), (f), (g) and (h) to vacate the judgment rendered on May 28, 1996, convicting him of second-degree murder and second-degree weapon possession. Defendant argues that vacatur is warranted based upon newly discovered evidence (sworn affidavits from two witnesses who now disavow their identifications of defendant and allege that acts of misconduct by the police and prosecutor were responsible for the procurement of their identifications), alleged *Brady* and *Rosario* violations, and the ineffective

assistance of trial counsel. Defendant also moves to vacate the judgment on the ground of “actual innocence.” In moving for vacatur, defendant seeks an evidentiary hearing so that the Court can make findings of fact essential to the determination of the motion as detailed in Criminal Procedure Law § 440.30 (5).

The People have filed an affirmation and memorandum of law opposing defendant’s motion. In it, they argue that if the Court were inclined to conduct a hearing it should do so for the limited purpose of examining the credibility and reliability of the allegations in the witnesses’ sworn affidavits.

The Court hereby grants defendant’s motion only to the extent that a hearing is ordered to examine the following: (1) the claim of alleged misconduct by law enforcement; (2) the claim of a *Brady* violation inasmuch as it is alleged that the prosecutor failed to disclose information to the defense that indicated that prior to trial witness Elizabeth Purser was unable to identify defendant as the perpetrator; (3) the claim of a *Rosario* violation inasmuch as it is alleged that the prosecutor failed to turn over records and a tape of the investigating detectives’ interview with Ms. Purser, who is alleged to have told law enforcement that she could not identify defendant as the perpetrator; (4) the claim of newly discovered evidence as it relates to the recantation of trial testimony inasmuch as Ms. Purser and Phillip Engelburt are now said to have disavowed their testimonial observations and identifications of

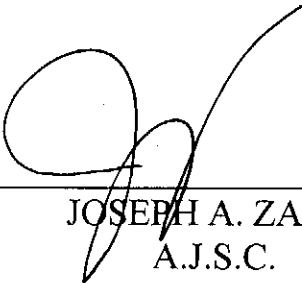
defendant; (5) the claim of ineffective assistance of trial counsel as it relates to counsel's failure to seek a mistrial after one of the investigating detectives blurted out at trial that the bullet recovered from the crime scene matched a bullet that was recovered from an unsolved murder that had occurred one week prior and within a one mile radius of the crime that defendant was convicted of committing (*see* CPL 440.30 [5]). At the hearing, defendant has the burden of proving by a preponderance of the evidence every fact essential to support the motion (*see* CPL 440.30 [6]).

Defendant's additional claim of a *Brady* violation predicated on the alleged failure of the prosecutor to disclose information about a homicide that occurred one week prior is denied inasmuch as defendant has failed to establish that the undisclosed information constitutes *Brady*. That *Brady* claim is also premature as the investigation of that matter, colloquially referred to as the *Rivera* case, remains open and it is unclear at this time whether that case has any exculpatory value in this case. When that investigation is complete, defendant is granted leave to renew his motion regarding that claim.

Finally, the parties are directed to contact chambers to choose a mutually agreed upon date for the hearing.

This constitutes the decision and order of the Court.

September 11, 2013



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JOSEPH A. ZAYAS  
A.J.S.C.