

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

State of New Hampshire

v.

Chasrick Heredia

Docket No. 216-2018-CR-00872

ORDER

On February 8, 2019, following a jury trial, defendant, Chasrick Heredia, was found guilty on charges of riot, resisting arrest, and disorderly conduct. The jury also found defendant not guilty on charges of attempted murder, first degree assault, second degree assault, and simple assault. Defendant now moves for a new trial and moves to set aside the verdict on the felony resisting arrest charge. The State objects. The court held a hearing on March 15, 2019. Upon consideration of the pleadings, the parties' arguments, and the applicable law, the court finds and rules as follows.

Factual Background

The charges against defendant arose out of an incident that occurred in the early morning hours of May 11, 2018. Manchester police officers Michael Roscoe and Canada Stewart, among others, responded to a call for service at the GloBar regarding a noise complaint. As the situation progressed, the crowd outside the bar became increasingly unruly. At some point, there was an altercation between Officer Stewart and defendant, who allegedly struggled with and struck Officer Stewart while she attempted to arrest him, which purportedly caused her to sustain a concussion. During this altercation, Officer Roscoe intervened in the struggle and employed force against

defendant in order to subdue him and effectuate his arrest. A portion of this altercation was filmed on a bystander video. Defendant is accused of, among other things, having engaged in tumultuous conduct and striking Officer Stewart, which is alleged to have caused her serious bodily injury. At trial, defendant denied that he struck Officer Stewart and argued, in part, the police used unlawful force against him. Part of this defense involved questioning the credibility of Officers Roscoe and Stewart and the truthfulness of their account, suggesting that Officer Roscoe unnecessarily and unreasonably escalated the incident with his use of force against defendant, and arguing that it was Officer Roscoe's blows to defendant that actually struck and caused injury to Officer Stewart.

Analysis

As an initial matter, the State moves to dismiss defendant's motions, arguing both were untimely filed under New Hampshire Rule of Criminal Procedure 25(e), which provides a party with ten days after the rendition of a verdict to file a motion to set aside the verdict. The court disagrees for the reasons set forth in defendant's objection. (Court Index #66.) The jury verdict in this case was rendered on February 8, 2019, and defendant's motions were filed on February 19, 2019. However, the day of the triggering event is not included in the computation of the ten-day time period. N.H. R. Crim. Pro. 35(f). Therefore, as defendant's motions were filed within ten days of February 9, 2019, the State's motions to dismiss are DENIED.

I. Motion for New Trial

Defendant argues he is entitled to a new trial because the State failed to disclose favorable information to him regarding two of the State's primary witnesses. In

particular, defendant's trial counsel learned after the jury rendered its verdict on February 8, 2019, that Officers Roscoe and Stewart were in a committed, romantic relationship at the time of the alleged crimes and during the pendency of this case.¹ Defendant contends the State's failure to disclose this information violated his due process rights because their perceived credibility was crucial to the State's case and was central to his defense at trial. While the State concedes that Officers Roscoe and Stewart were in a relationship during the relevant time period, it nonetheless argues that defendant is not entitled to a new trial because it did not possess the information and the officers' personal relationship was not material to defendant's charges.² The State therefore asserts defendant's knowledge of the evidence would not have led to a different result at trial.

"There is no doubt that the prosecution has a duty to disclose evidence favorable to the accused where the evidence is material either to guilt or to punishment." State v. Lucius, 140 N.H. 60, 63 (1995). "Generally, to secure a new trial pursuant to the Due Process Clauses of the [New Hampshire] and Federal Constitutions, a defendant must

¹ This information was later confirmed by William Freyler, an investigator used by defendant's trial counsel, who found evidence of the officers' romantic relationship dating back to November 2016 via their respective Facebook pages. (See Def.'s Ex. A.)

² The State also argued that defendant's trial counsel should be compelled to disclose the identity of the colleague who possessed this information because this knowledge should be imputed among members of the public defender's office and defendant could not be granted a new trial if his trial counsel was in possession of the information by virtue of this imputed knowledge. The court denied the State's motion to compel this disclosure, (Court Index #71), and denied the State's oral motion to reconsider at the hearing. Contrary to the State's assertion, this decision was not intended as a broad ruling on imputed knowledge generally but was based on the specific facts and circumstances of this case. The State did not dispute that Attorney Jefferson did not personally possess the information prior to trial, nor did it dispute that Attorney Jefferson was the only attorney representing defendant from the public defender's office. The State also did not provide any law, outside the context of professional conflicts of interest, which supported the proposition that knowledge by one member of a firm can be imputed to another member of a firm for purposes of estopping a legal argument regarding an opposing party's duty to disclose favorable evidence in its possession. Finally, the court notes that even if it was determined that someone within the public defender's office knew about the relationship prior to trial, absent a finding that defendant's legal team knew the information and "sat on it" to obtain a strategic advantage, the outcome would have been the same. The court finds that the State has not set forth any credible evidence to suggest that such strategic advantage would have been sought here.

prove that the prosecution withheld evidence that is favorable and material." State v. Shepherd, 159 N.H. 163, 170 (2009). If a defendant proves that the State withheld evidence that is favorable, "there is a presumption that the evidence is material and the burden shifts to the State to prove, beyond a reasonable doubt, that the undisclosed evidence would not have affected the verdict." Id. (quoting State v. Laurie, 139 N.H. 325, 330 (1995)). For purposes of analyzing whether the State knowingly withheld favorable evidence, members of the police are considered part of "the State." See Lucius, 140 N.H. at 63 ("[F]ailure of the police to disclose exculpatory evidence to the prosecutor, who in turn could have turned it over to the defense, is treated no differently than if the prosecutor failed to turn it over to the defense.").

The court will first address whether defendant has met his burden of proving that the undisclosed information is favorable. "Favorable evidence is that which is admissible, likely to lead to the discovery of admissible evidence, or otherwise relevant to the preparation or presentation of the defense." Shepherd, 159 N.H. at 170. Impeachment evidence may be considered favorable evidence. Id. Defendant argues the undisclosed information about the relationship between Officers Roscoe and Stewart was favorable because it establishes possible bias against defendant, underscores their motivation to lie or exaggerate the truth regarding the incident underlying the charges, and bolsters defendant's assertion that Officer Roscoe "lost his cool" in responding to the incident. The court agrees.

Information pertaining to a witness's credibility is considered useful impeachment evidence that is favorable to a defendant at trial. State v. Dewitt, 143 N.H. 24, 34 (1998). For example, in Shepherd, the State's case relied heavily on the credibility of an

alleged victim whose undisclosed mental health records were considered favorable because “[t]he undisclosed evidence could have led to a line of impeachment questioning that may have affected the verdict.” Id. at 172. Similarly here, if defendant possessed the information regarding the officers’ relationship, he would have had a good faith basis to question whether their relationship provided a motive to lie or protect each other, and the jury could have observed their answers and demeanor to assess their credibility. See id. Given defendant’s theory of defense that it was Officer Roscoe who “lost his cool” and inadvertently struck Officer Stewart when he was striking the defendant, the fact that Officers Roscoe and Stewart were in a committed relationship at the time could have bolstered this assertion. Where, as here, the officers were adverse witnesses, “such information is sufficiently favorable to the defendant to trigger the State’s obligation to disclose it.” Id.; see also Dewitt, 143 N.H. at 34 (“[W]hen the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility may violate due process.”). For all of the foregoing reasons, the court concludes defendant has satisfied his burden of proving the undisclosed information was favorable.

The court must next consider whether the State knowingly withheld the evidence. The State argues that it was not in possession of this information prior to trial and should not be required to gather favorable evidence for a defendant that it does not possess. However, this argument overlooks that the duty to turn over favorable evidence applies not just to evidence in the prosecutor’s possession, but information “in the possession of a law enforcement agency charged with the investigation and presentation of the case.” State v. Lavallee, 145 N.H. 424, 427 (2000); see also Lucius,

140 N.H. at 63 (explaining that the *Brady* rule also applies to police); State v. Colbath, 130 N.H. 316, 320–21 (1988) (“[The] State would be well advised to remind its police investigators of the rule in *Brady*.”). Here, it is clear that Officer Roscoe and Officer Stewart were aware of their personal relationship prior to defendant’s trial and failed to disclose it. As the police are considered actors of the State for purposes of this analysis, the court finds the undisclosed information was knowingly withheld from defendant.

The court next considers whether the State has met its burden of proving, beyond a reasonable doubt, that the undisclosed evidence would not have affected the verdict. The State argues it would not have affected the verdict because defendant challenged the credibility and truthfulness of the officers at trial, so the undisclosed information was cumulative of that point. The court disagrees as considering whether evidence is cumulative arises under the analysis for newly discovered evidence, see State v. Cossette, 151 N.H. 355, 361 (2004), but is irrelevant when considering whether evidence was improperly withheld by the State, see Laurie, 139 N.H. at 30.

The State also points out that the officers were not the only witnesses who offered testimony relating to defendant’s charges. However, even where the State’s case does not rest solely on a witness’s testimony, undisclosed impeachment evidence may still affect the verdict. See Shepherd, 159 N.H. at 172. Moreover, there is no serious dispute that Officers Roscoe and Stewart were primary witnesses for the State and defendant’s argument at trial involved questioning whether the officers escalated the situation and used unlawful force against him. Information pertaining to their credibility and potential motive to lie is therefore highly material because it could have bolstered defendant’s theory of the case. See Lucius, 140 N.H. at 64. The court

therefore concludes the State failed to meet its burden of proving the undisclosed information would not have affected the verdict.

The court is mindful of the State's argument with respect to the potential consequences of this ruling, but notes that this decision is based on the specific facts of this case and is not intended to set a broad rule that prosecutors must always investigate the personal lives of investigating officers involved in a case or that in every instance the officers must disclose their personal relationships. Here, however, Officers Roscoe and Stewart were not only primary witnesses for the State, but also alleged victims, and their testimony provided significant evidence relating to the charges against defendant. The potentially exculpatory nature of their romantic relationship in this case should have been evident because it could clearly impact their perceived credibility to a jury and is therefore favorable to the preparation and presentation of defendant's defense. Under these unique circumstances, it is incumbent upon the State to disclose the relationship of the officers where they are both investigating officers and alleged victims. Moreover, this ruling does not impose any additional duty to disclose favorable information than is already expected of law enforcement officers collaborating with prosecutors on a case. See Lavalley, 145 N.H. at 427.

Accordingly, defendant's motion for a new trial is GRANTED.

II. Motion to Set Aside Verdict

Defendant moves to set aside the verdict for his charge of felony resisting arrest causing serious bodily injury. Defendant argues the trial court's jury instruction on this charge impermissibly amended the indictment by failing to include the alleged conduct specified in the indictment as the serious bodily injury caused to Officer Stewart—

namely, that defendant "punch[ed] Officer Stewart in the face causing her to sustain a concussion[.]" (Charge ID #1522587C.) Defendant asserts that because the jury acquitted him on the attempted murder and assault charges, which were also predicated on defendant punching Officer Stewart, the court should presume that the jury would have found him not guilty on the resisting arrest charge absent the defective jury instruction. For this reason, defendant requests a directed verdict of not guilty on the resisting arrest charge.

At the outset, the court acknowledges that jury instructions may not change the elements of an offense charged by a grand jury, and such an impermissible amendment may apply to an allegation in the indictment that "has the effect of specifying and circumscribing the scope of the crime alleged." State v. Elliott, 133 N.H. 759, 764 (1990). However, because the court disagrees that a directed verdict is the proper remedy for this type of error, the court need not determine at this juncture whether its jury instruction on defendant's resisting arrest charge impermissibly amended the indictment.

In particular, the cases cited by defendant where courts found an impermissible amendment to an indictment all resulted in a remand for a new trial. See State v. Kelly, 160 N.H. 190, 203 (2010) (reversing and remanding for a new trial); Elliott, 133 N.H. at 767 (same); State v. Erickson, 129 N.H. 515, 519 (1987) (same). Moreover, defendant's reliance on State v. Locke, 166 N.H. 344 (2014), for the proposition that a directed verdict is warranted here is also misplaced. In Locke, the defendant was acquitted on a first degree assault charge and was thereafter indicted and convicted of second degree assault for the same charged conduct. 166 N.H. at 345–46. The Court overturned the

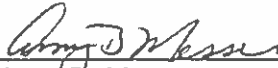
defendant's conviction for second degree assault pursuant to the compulsory joinder rule, finding the first and second degree assault charges "were based on the same conduct or arose from the same criminal episode" and should have been tried at the same time. Id. at 350-51. The circumstances in Locke are irrelevant to the present case, and nothing in Locke supports defendant's argument that a directed verdict is required simply because he was acquitted on charges that also alleged he struck and caused serious bodily injury to Officer Stewart. The Court cannot speculate as to what evidence the jury relied on in rendering its verdict.

Based on the foregoing, the court concludes that the remedy for an impermissible amendment to defendant's resisting arrest indictment would be a new trial and not a directed verdict. Where the court has already granted defendant's motion for a new trial on other grounds, it is unnecessary to determine whether a new trial is warranted for this reason. Accordingly, defendant's motion to set aside the verdict is DENIED.

As a final matter, the court notes that sentencing is presently scheduled for Friday, March 29, 2019. In light of the court's ruling, this hearing will be converted to a status conference for purposes of scheduling defendant's new trial. Defendant shall be transported for the hearing.

SO ORDERED.

3/27/2019
Date



Amy B. Messer
Presiding Justice