

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 14, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

JAWAUN WARD,

Petitioner - Appellant,

v.

SEAN PRUITT; THE ATTORNEY
GENERAL OF THE STATE OF
COLORADO,

Respondents - Appellees.

No. 21-1260
(D.C. No. 1:21-CV-00080-RM)
(D. Colo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **MATHESON, BRISCOE, and PHILLIPS**, Circuit Judges.

Petitioner Jawaun Ward, a Colorado state prisoner proceeding pro se,¹ seeks a certificate of appealability (“COA”) to appeal the district court’s dismissal of his 28 U.S.C. § 2254 habeas corpus petition. We are persuaded reasonable jurists would not debate the district court’s ruling, *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003), and thus we deny Ward’s request for a COA and dismiss this matter.

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ “Although we liberally construe pro se filings, we do not assume the role of advocate.” *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008) (internal quotation omitted).

I

In December 2010, Ward and his then-girlfriend Marva Mitchell hatched a scheme to steal from one of Mitchell's former boyfriends. On December 27, 2010, the two went to the victim's house with the intent to break in. When they arrived, the victim was there, so Mitchell proceeded to set up plans to meet with him later that day. The two met up as planned, and Ward, along with another person, N.M., tackled the victim and placed him in the backseat of Ward's vehicle. They then drove to the victim's home, where Ward and N.M. placed the victim in his downstairs bathroom while Mitchell stole various items. Before they left, Ward moved the victim to his furnace room. The next morning, the victim was found dead by his brother, hog-tied with a plastic bag over his head. The brother reported the death to the police, including that the victim told him before his death that Mitchell had visited him accompanied by a large man, and the two had been driving a white Dodge Durango.

Early on the morning of January 3, 2011, Ward and Mitchell were stopped while driving a white Dodge Durango. The officer initiated the stop because the car appeared to be lacking a valid license plate. After approaching the vehicle, however, the officer saw a valid temporary tag on the vehicle. At this point, her reasonable suspicion for the stop had ended. Nevertheless, she still requested identification from both Ward and Mitchell, and upon notifying dispatch, was told to impound the vehicle and take the two into the station for questioning, as the vehicle fit the description given to the police by the murder victim's brother.

Later that same day, January 3, 2011, Mitchell gave an interview about the events of the prior day, and she implicated another man, R.C., along with Ward and N.M. She was reinterviewed on January 14, 2011, but the recording of that interview was lost; Ward was not made aware of this fact until after his trial had concluded, and no one can recall what was said during the January 14 interview. Mitchell was interviewed again on August 30, 2012, when she gave an account incriminating herself, Ward, and N.M. Mitchell ultimately pleaded guilty to second-degree murder. As part of her plea, she agreed to testify truthfully at Ward's trial.

When preparing for Ward's trial, Ward's counsel received a video advisement of the January 14 interview, but no corresponding video. Ward's counsel admits his oversight in failing to discover this discrepancy. The police later claimed the recording of the interview had been deleted from the police department's hard drive.

At his trial in June 2013, Ward claimed Mitchell had falsely implicated him, just as she had previously implicated R.C., to avoid taking responsibility for her role in the crime and to hopefully receive a lesser sentence. Ward's counsel repeatedly questioned Mitchell regarding her various statements to the police, including her false statements, her inconsistencies, and her motives for finally confessing. Mitchell responded that her initial false statements were made out of her fear of Ward. She also claimed that by naming N.M, she thought the police would interview him, and that he would implicate Ward.

A jury found Ward guilty of first-degree felony murder, second-degree kidnapping, aggravated robbery, and burglary, all in violation of Colorado state law. He

is currently serving a life sentence without the possibility of parole. Ward filed a direct appeal with the Colorado Court of Appeals, and the Court affirmed. Ward then filed a state postconviction appeal, and the Colorado Court of Appeals again affirmed his conviction.

II

Ward has now filed a federal habeas petition pursuant to § 2254. He raises three claims: (1) ineffective assistance of trial counsel after his counsel failed to investigate and obtain evidence Ward speculates would be exculpatory, (2) denial of due process by the destruction of the January 14 video interview, and (3) a Fourth Amendment violation regarding the admission of evidence after an illegal traffic stop. The district court denied Ward's habeas petition, dismissed his case with prejudice, and declined to issue a COA.

Ward now seeks a COA from this court, requesting that his convictions be vacated and the case remanded for a new trial. Ward has filed a brief alleging the trial court improperly applied the attenuation and inevitable-discovery doctrines relating to the evidence obtained from an illegal traffic stop. To obtain a COA, Ward must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The last state court to evaluate the merits of Ward's case was the Colorado Court of Appeals. Thus, federal habeas relief is only available if we conclude that court's decision “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d).

III

A. Ineffective Assistance of Counsel

Ward claims his counsel was ineffective when he failed to locate and present the recording of Mitchell's January 14 interview. The Colorado Court of Appeals considered this issue under the standard set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (crafting a two-part test requiring a defendant show "that counsel's performance was deficient" and "that the deficient performance prejudiced the defense"). The Court of Appeals rejected Ward's claim because he failed to show how he was prejudiced when the recording was not timely found. In other words, Ward could not explain how the discovery of the interview recording would have changed the outcome of his trial.

Ward carries the burden to show he was prejudiced by his counsel's failure to locate and present the January 14 interview. But he does not allege the January 14 interview contained exonerating statements; instead, he argues the video would show Mitchell making additional inconsistent statements. The Colorado Court of Appeals considered this argument and concluded that Ward's counsel had "thoroughly attacked" Mitchell's credibility at trial by cross-examining her regarding her prior false and inconsistent statements. ROA, 228–29. Thus, the Court found that counsel's failure to uncover additional inconsistent statements was not prejudicial.

The district court correctly determined that Ward failed to establish that the Colorado Court of Appeals' decision was contrary to, or an unreasonable application of, clearly established Supreme Court precedent because he failed to identify any materially distinguishable Supreme Court decision that would have compelled a different result.

B. Denial of Due Process

Ward's due process claim also stems from the missing recording of the January 14, 2011, interview. Ward claims the destruction of the video denied his right to due process because, he speculates, the video would have provided further impeachment evidence against Mitchell.

The Colorado Court of Appeals considered this issue under the Supreme Court precedent set forth in *California v. Trombetta*, 467 U.S. 479 (1984) and *Arizona v. Youngblood*, 488 U.S. 51 (1988). The State violates a defendant's due process rights if it destroys or fails to produce evidence that had an apparent exculpatory value when destroyed. *Trombetta*, 467 U.S. at 489. A defendant must establish that the destruction of evidence was done in bad faith if, when it was destroyed, that evidence was only potentially exculpatory. *Youngblood*, 488 U.S. at 58 (“[U]nless a criminal defendant can show bad faith on the part of the police, failure to preserve *potentially* useful evidence does not constitute a denial of due process of law.” (emphasis added)); *see also Trombetta*, 467 U.S. at 486. Ward claims no one knows what the destroyed video would have shown. Thus, the Colorado Court of Appeals concluded that the videotape could not be apparently exculpatory and was instead merely potentially useful. The Court of Appeals then determined that Ward was required under *Youngblood* to show that the video's destruction was caused by the police acting in bad faith. Ward failed to satisfy that showing, suggesting only that the destruction was inadvertent or negligent. We conclude the district court, upon review of the rulings of the Colorado Court of Appeals, correctly found that no existing Supreme Court precedent compels a result different from

that reached by the Colorado Court of Appeals, and that reasonable jurists would not disagree with the district court's conclusion.

C. Fourth Amendment violation

Finally, Ward claims the trial court failed to suppress all evidence obtained through the illegal traffic stop. He argues to this court that the trial court erred when it determined the attenuation and inevitable-discovery doctrines applied to Mitchell's January 3 statement and the evidence connecting Ward to the vehicle.

The traffic stop was addressed by the trial court on a motion to suppress, and it concluded the illegality of the stop necessitated the suppression of evidence stemming from the stop, including items seized from inside the vehicle. However, the trial court did not suppress Mitchell's statement made several hours after the stop, finding it was attenuated, nor did it suppress the fact that Ward was discovered driving the white Dodge Durango, finding the connection between Ward and the vehicle was inevitable.

On direct appeal, the Colorado Court of Appeals rejected Ward's challenge to the trial court's denial of his motion to suppress. The Court of Appeals agreed with the trial court that Mitchell's statements were attenuated, meaning there was an intervening act of free will between when the police first arrested Mitchell and her later statements, finding she spoke to the police of her own volition. The Court also agreed with the trial court that "Ward's Durango inevitably would have been discovered," as the "police learned from information supplied by [the victim's] brother that Mitchell and a white Durango were related to the robbery and murder and learned from Mitchell herself that Ward owned the Durango and resided at his grandmother's house." ROA, 145. Thus, the

Court of Appeals affirmed the trial court’s appropriate conclusion “that Ward’s ownership of the Durango and a photograph of it were properly admissible because they would have been inevitably discovered through independent investigation.” *Id.*

On his postconviction appeal, the district court concluded that the trial court gave Ward a full and fair opportunity to litigate this Fourth Amendment claim. While Ward continues to challenge the trial court’s denial of his motion to suppress, the standard we apply is whether the State granted him an opportunity for “full and fair litigation of [his] Fourth Amendment claim” *Stone v. Powell*, 428 U.S. 465, 482 (1976). The district court determined that “Mr. Ward’s real argument . . . is a substantive disagreement with the resolution of his Fourth Amendment claim by the state courts. However, disagreement with a state court’s resolution of a Fourth Amendment claim is not enough to overcome the bar in *Stone*.” ROA, 314 (citing *Matthews v. Workman*, 577 F.3d 1175, 1194 (10th Cir. 2009)).

Ward fails to demonstrate he was not granted an opportunity to fully and fairly litigate his Fourth Amendment claim, or that the trial court’s ruling on his Fourth Amendment claim was contrary to established Supreme Court precedent.

III

Ward's motion for a certificate of appealability is **DENIED**, and this matter is **DISMISSED**.

Entered for the Court

Mary Beck Briscoe
Circuit Judge