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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000962-MR

BILLY F. FIELDS

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE ANDREW C. SELF, JUDGE
ACTION NO. 08-CR-00834

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: CLAYTON, CHIEF JUDGE; COMBS AND JONES, JUDGES.

CLAYTON, CHIEF JUDGE: Billy F. Fields appeals from a Christian Circuit Court order denying his motion made pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42. Because the trial court did not err in denying the motion, we affirm.

BACKGROUND

Fields was found guilty of murder, first-degree rape, kidnapping, first-degree sodomy, and tampering with physical evidence, and sentenced to life in prison. The underlying facts of Fields's case, in which he was tried jointly with two other co-defendants, Jimmie Cramer and Jeffrey Lee Boyd, were set forth by the Kentucky Supreme Court on direct appeal following the trial:

On the morning of October 2, 1987, a city street worker in the Muhlenberg County town of Central City noticed a vehicle with blood on it parked near the city garage. He contacted police, who opened the vehicle and discovered the body of Corrina Mullen. An autopsy revealed that Mullen had been beaten and stabbed to death and that the injuries she suffered were extraordinarily brutal. [Footnote: Mullen suffered multiple severe facial injuries; she had two stab wounds and one cut to her neck; she had bruises on her back and arms; one of her nipples was cut off; there were tears and one deep laceration of her vagina; and she suffered defensive wounds to her wrists, fingertips and palms.]

At the time of her death, Mullen was the girlfriend of Jimmy Springer, but she was also involved in a relationship with Fields, then a lieutenant on the Central City Police force. Fields and Springer were friends with Appellants Cramer and Boyd. In the weeks before her death, Mullen had falsely claimed that she was pregnant and that Fields was the father. She also reported to Central City Police Officer John Scott that Boyd, Springer, and a person named Dale Duncan were involved in criminal activity involving illegal drugs and stolen property. Scott told Fields about Mullen's tip.

The initial investigation of Mullen's murder resulted in murder charges against Jimmy Springer.

However, in 1988, Springer was tried and acquitted. Thereafter, the case languished until 2005.

In 2005, Kentucky State Police Detective Steve Silfies, while investigating a different crime, learned that a person named Samantha Robinson had information about an unsolved murder in Central City. He passed her name on to Detective Damon Fleming, who had recently begun to reinvestigate the Mullen murder. Fleming interviewed Robinson who told him she was an eyewitness to Mullen's murder. Her statement, along with other evidence gathered during the investigation, led to [the] indictments [of Fields, Cramer, and Boyd]. Mullen's roommate, Angela Smith and Jimmy Springer were also indicted.

In the light most favorable to the verdict, the facts established at trial are as follows. On the evening of October 1, 1987, Robinson, then sixteen years old, was standing outside her residence when two men abducted her. The men, later identified as Fields and Boyd, grabbed and forced her into their car. They drove her to the apartment where Mullen and Smith lived and took her into the residence. Mullen, Smith, Cramer, Springer, and another man that Robinson could not identify were inside.

Fields began to argue with Mullen. Robinson was unsure of what the argument was about, but testified it could have been about Mullen's supposed pregnancy. Fields then took Mullen into a bedroom and Boyd pushed Robinson in after them. Robinson testified that Fields continued to argue with Mullen about "opening her mouth" and told her that he was going to make sure "she got what she deserved." Fields began beating Mullen with a metal bar. He then raped Mullen, after which Cramer, Boyd, and Springer each raped her. Fields then held down Robinson and sodomized her. After that, Fields beat Mullen again and then stabbed and cut her with a knife.

Mullen, by then either dead or unconscious, was placed in the trunk of her own car. Fields ordered Robinson to drive Mullen's vehicle to the city garage in Central City, and she did so. When she arrived, Boyd was already there. Robinson places her arrival at the garage around sunrise. She testified that after parking the vehicle she fled and ran to her mother's home. She had no subsequent contact with any of the codefendants concerning her participation in the events. At the time, Robinson told only her adoptive mother what she had seen.

Other witnesses observed Appellants near the city garage that night. Brian Robinson [no relation to Samantha Robinson] was helping to close his father's business when he saw Fields and Boyd walking together near the old city garage at about 1:00 a.m. Central City Police Officer Michael Phillips testified that he saw Boyd walking toward the garage around 3:00 a.m.

Fields was the first policeman to arrive at the city garage after Mullen's car was found. He also was involved in the initial stages of the investigation. He handled some of the evidence that was gathered, including evidence that was sent to the state police lab. Some of the evidence handled by Fields was lost and never found again. That missing evidence formed the basis for his present conviction of tampering with physical evidence.

Fields v. Commonwealth, Nos. 2009-SC-000435-MR, 2009-SC-000457-MR, 2009-SC-000732-TG, 2011 WL 3793149, at *1-2 (Ky. Aug. 25, 2011) (most footnoted citations omitted). The Court affirmed Fields's conviction on direct appeal, and the opinion became final on September 15, 2011.

Through counsel, Fields thereafter filed a motion to vacate his conviction pursuant to RCr 11.42 on September 11, 2014, alleging ineffective assistance of trial counsel and violation of his due process rights pursuant to *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). The trial court held an evidentiary hearing, at which testimony was heard from, among others, Fields's defense counsel and the Mullen trial prosecutor.

In his RCr 11.42 motion, Fields claimed ineffective assistance of counsel stemming from his belief that Samantha's initial statements to police were inconsistent with her testimony at trial, and that those inconsistent statements should have been used to impeach her credibility as the main witness in the trial. Particularly, in Samantha's videotaped interview with the police, she stated that Mullen's boyfriend Springer, although present at the crime, was not a willing participant in the offenses. Samantha also told detectives in the police interview that she did not see Springer hit Mullen, and that Springer was trying to help Mullen but was unable to do so. At trial, however, while Samantha again stated that Springer was trying to help Mullen and was not a willing participant in the crime, she further testified that the three defendants forced Springer to have intercourse with Mullen.

Fields also alleged in his RCr 11.42 motion a violation of his due process rights pursuant to *Brady v. Maryland*. The trial court's summary of the facts as to the *Brady* issue is as follows:

In early 2009, prior to the commencement of the trial in this case, Ms. Robinson's husband, Michael Robinson, who may or may not have been estranged from her at that time, entered a guilty plea to methamphetamine and persistent felony offender, first-degree charges in Muhlenberg Circuit Court.

Following the entry of Mr. Robinson's plea, his attorney, Steve Lamb, at Mr. Robinson's request, contacted Ralph Vick, Commonwealth's Attorney for Muhlenberg County. Although neither Lamb nor Vick could remember the specifics of their discussion or any information that Mr. Robinson may have claimed to have had regarding the 1987 murder, Vick nevertheless arranged for a meeting between Mr. Robinson and Tim Coleman, who was serving as the special prosecutor in [the Fields] case. The meeting occurred prior to the commencement of the trial in [the Fields] case and prior to Mr. Robinson's final sentencing in his Muhlenberg County case, which was continued on several occasions and ultimately was held following the completion of the trial in [the Fields] case.

At the RCr 11.42 hearing in this case, Coleman testified that Robinson had absolutely no information that would be helpful to him with regard to [the Fields] case. Coleman was not sure whether the Robinsons were even together at that time and he believes that Mr. Robinson was arrested on the Muhlenberg County charges with another woman. Nevertheless, Coleman listened to what Robinson had to say, never promised him anything, never gave him anything, and ultimately described the scheduled meeting as a "wasted trip." Coleman further testified that he never had any conversations with

Samantha Robinson until after the trial in this case was completed, when she asked him what might happen to [Mr. Robinson] while they were waiting for the jury to return its verdict in [the Fields] case.

Vick also testified that he never promised Mr. Robinson anything, although he did tell Coleman that he would consider dropping or reducing the persistent felony offender charge against Mr. Robinson if Mr. Robinson had anything of value for Coleman. Based on the meeting between Coleman and Mr. Robinson, Coleman advised Vick that Mr. Robinson did not have anything of value and that Mr. Vick should proceed as he normally would. The final sentencing of Mr. Robinson took place in late May, 2009, and was consistent with the terms of his plea agreement.

Mr. Robinson also testified at the evidentiary hearing in this matter. At the time of his testimony, Mr. Robinson was still an inmate with the Kentucky Department of Corrections, having served over half of his sentence (22 years) with at least two years remaining before he becomes parole eligible. For reasons which were not fully explained, Mr. Robinson testified that it was his “assumption” that his persistent felony offender, first charge would be dropped to a persistent felony offender, second charge once the murder trial was concluded. However, he also made it clear that no promises were ever made to him by either Coleman or Vick regarding his sentence, specifically as it pertained to the testimony of Ms. Robinson.

Mr. Robinson [further] testified that he did not have any information regarding the Mullen murder or anything else related to this case.

The trial court denied Fields’s RCr 11.42 motion, and this appeal followed.

Additional facts will be discussed as needed in our analysis below.

ANALYSIS

a. Ineffective Assistance of Counsel

A court considers two criteria in determining whether trial counsel's performance was so ineffective as to warrant a new trial:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984). When determining prejudice to the defendant, the inquiry is whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. A "reasonable probability" means "a probability sufficient to undermine confidence in the outcome" considering "the totality of the evidence before the judge or jury." *Strickland*, 466 U.S. at 695.

Moreover, "[j]udicial scrutiny of counsel's performance must be highly deferential. . . . A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct

from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689. Courts “must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action ‘might be considered sound trial strategy.’” *Id.* (quoting *Michel v. Louisiana*, 350 U.S. 91, 101, 76 S.Ct. 158, 164, 100 L.Ed. 83 (1955)).

Upon appellate review, “both parts of the *Strickland* test for ineffective assistance of counsel involve mixed questions of law and fact, [and] the reviewing court must defer to the determination of facts and credibility made by the trial court.” *Brown v. Commonwealth*, 253 S.W.3d 490, 500 (Ky. 2008) (citing *McQueen v. Commonwealth*, 721 S.W.2d 694, 698 (Ky.1986)). “Ultimately however, if the findings of the trial judge are clearly erroneous, the reviewing court may set aside those fact determinations.” *Id.* (citing Kentucky Rules of Civil Procedure (CR) 52.01). A finding of fact is clearly erroneous unless it is supported by substantial evidence. *Black Motor Co. v. Greene*, 385 S.W.2d 954, 956 (Ky. 1964) (internal citations omitted). Substantial evidence is evidence that, “when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person.” *Bowling v. Natural Resources and Environmental Protection Cabinet*, 891 S.W.2d 406, 409 (Ky. App. 1994) (internal citations omitted). The final review regarding whether counsel’s performance was

deficient and the defendant suffered prejudice as a result is made *de novo* by the appellate court. *Brown*, 253 S.W.3d at 500.

In this case, Fields has not met his burden of showing that his representation was professionally deficient or that his defense was prejudiced. The record reveals that Samantha was thoroughly and robustly cross-examined by each of the co-defendants' counsel regarding statements and circumstances that were arguably more of an impeachment of her credibility. She was cross-examined about and impeached with both her previous felony convictions and inconsistent statements concerning whether she was sexually assaulted during the commission of the crimes against Mullen. Further, she was questioned about whether she had been a witness to other homicides, calling into question the veracity of statements in the Mullen homicide.

Additionally, Samantha's version of the events that transpired that night was continually called into question during her cross-examination by each of the defendants' attorneys, and her cross-examination was sufficient to raise doubts about Samantha's version of events in the minds of the jury. She was questioned about the fact that she was found in possession of Mullen's keyring and keys after the murder. She was asked about her failure to warn her sister when her sister later started dating Cramer, or to tell her father, who worked with Cramer. She was questioned about the probability of being kidnapped by two men, sodomized by

one of them, witnessing a murder, and then being allowed to get dressed and drive the car with Mullen's body in the trunk. She was questioned about both her description of the way she parked the car and how Mullen fought against her attackers, suggesting that each statement was inconsistent with the physical evidence. Moreover, she was questioned about the likelihood that murderers would allow an eyewitness to get away from them.

Although Fields's trial counsel could have asked Samantha about the fact that she had omitted in her interview with police that Springer had engaged in intercourse with Mullen, the three attorneys possessed absolutely contradictory prior statements to cross-examine her about, which they did. The fact that Fields's attorney could have asked one additional question does not lead to the conclusion that his counsel was not functioning as required by the Constitution. In any event, the damaging potential of Samantha's cross-examination was fully realized through other means. The trial court did not err in rejecting Fields's claim of ineffective assistance of counsel.

b. Withholding of Material Evidence

Fields next argues that the trial court erred in denying his claim that the Commonwealth withheld exculpatory evidence in contravention of *Brady*, alleging that Samantha's husband, Michael, was promised a deal in his Muhlenberg County case in exchange for Samantha's testimony at trial.

In *Brady v. Maryland*, 373 U.S. at 87, the United States Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” “Under the *Brady* doctrine, evidence is material ‘if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.’” *Commonwealth v. Bussell*, 226 S.W.3d 96, 99-100 (Ky. 2007) (footnoted citations omitted). “A ‘reasonable probability’ is defined as ‘a probability sufficient to undermine confidence in the outcome.’” *Id.* at 100 (quoting *Strickland*, 466 U.S. at 694). The materiality of a failure to disclose favorable evidence “must be evaluated in the context of the entire record.” *U.S. v. Agurs*, 427 U.S. 97, 112, 96 S.Ct. 2392, 2402, 49 L.Ed.2d 342 (1976) (footnote omitted). Moreover, “the mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome does not establish materiality in the constitutional sense.” *St. Clair v. Commonwealth*, 140 S.W.3d 510, 541 (Ky. 2004). Moreover, as in the context of an ineffective assistance of counsel claim, the defendant must “show that there is a reasonable probability the result of the trial would have been different had the exculpatory evidence been disclosed to the defense” *Bussell*, 226 S.W.3d at 101 (citing *Sanders v. Commonwealth*, 89 S.W.3d 380, 385 (Ky. 2002)).

Also similar to claims of ineffective assistance of counsel, appellate review of a claim under *Brady* presents mixed questions of law and fact and is reviewed *de novo*. *Bussell*, 226 S.W.3d at 100 (citing *United States v. Corrado*, 227 F.3d 528, 538 (6th Cir. 2000)).

In the case *sub judice*, we agree with the trial court that materiality and prejudice are again the determining factors in declining to apply *Brady* to this situation. Regarding the materiality of the evidence Fields claims was withheld, we cannot say that the trial court's findings were clearly erroneous. The only evidence Fields provided regarding his *Brady* claim was that Coleman spoke to Michael about whether Michael could provide any information in the Mullen trial, and when he could not, the matter was dropped. Moreover, Samantha gave her initial statement to the police years before Michael incurred any of the charges at issue in Muhlenberg County. The suggestion that Samantha was motivated to testify untruthfully to seek leniency for her husband is pure speculation. Although this information "might have helped the defense," it "does not establish materiality in the constitutional sense." *St. Clair*, 140 S.W.3d at 541.

Moreover, Fields has not convincingly presented any reasonable probability that the outcome of the trial would have been different had Coleman's discussions with Michael been disclosed to Fields or his counsel prior to the trial in this case. The introduction of the discussions would only have gone to the

credibility and motivation of Samantha as a witness and, as previously discussed, she was exhaustively cross-examined by counsel for all three of the defendants on a wide variety of matters, including significant challenges to her credibility as a witness. In the absence of “a probability sufficient to undermine confidence in the outcome[,]” of the trial regarding Fields’s claim under *Brady*, the claim fails.

Bussell, 226 S.W.3d at 100 (quoting *Strickland*, 466 U.S. at 694).

For the foregoing reasons, the judgment of the Christian Circuit Court is affirmed.

ALL CONCUR.

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