

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER SOUND O'NEILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50041

FILED

NOV 19 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingerson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion for a new trial. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Appellant Christopher Sound O'Neill was convicted, pursuant to a jury verdict, of three counts of possession of a forged instrument. O'Neill was adjudicated a habitual criminal and sentenced to three concurrent terms of life in prison with the possibility of parole after ten years. On direct appeal, this court affirmed the judgment of conviction but remanded to the district court to vacate the special sentence of lifetime supervision.¹ The remittitur issued on April 3, 2007.

¹O'Neill v. State, 123 Nev. 9, 153 P.3d 38 (2007).

On June 6, 2007, O'Neill filed a motion for new trial based on violations of Brady v. Maryland² and newly discovered evidence. The State opposed the motion. On July 24, 2007, the district court denied the motion for new trial concluding that no Brady violation had occurred because the withheld evidence was not material. In addition, the district court found that a new trial was not warranted on the basis of newly discovered evidence because the new evidence was impeachment evidence which cannot be the basis for granting a new trial. This appeal followed.

The pertinent facts are as follows: At the time of his arrest, O'Neill was on parole. His parole officer, Brent Cooper, requested that he be detained. The record is unclear as to why Officer Cooper wanted O'Neill detained. Detectives Michael Brown and Joseph Lever located O'Neill and held him until Officer Cooper arrived. Thereafter, Officer Cooper searched O'Neill and found two forged checks in his pocket along with some yellow page listings for check-cashing stores. His partner, Officer Adam Summers, searched O'Neill's vehicle and found a third forged check.

O'Neill raises two issues on appeal. First, he argues that the district court abused its discretion in denying his motion for a new trial on the ground that the State withheld information favorable to O'Neill in violation of Brady.³ Specifically, O'Neill contends that the State withheld

²373 U.S. 83 (1963).

³Id.

information that his parole officer had falsified reports about O'Neill, for which the parole officer was fired. The withheld evidence concerns a letter from the Division of Parole and Probation to the Washoe County District Attorney. The letter states that O'Neill's probation officer, Officer Cooper, falsely reported that he received a negative urine sample from O'Neill when Officer Cooper had never received any urine sample from O'Neill.

Determining whether the State adequately disclosed information under Brady involves both questions of fact and law, therefore this court will conduct a de novo review.⁴ A Brady violation has three components: "the evidence at issue is favorable to the accused; the evidence was withheld by the [S]tate, either intentionally or inadvertently; and prejudice ensued, i.e., the evidence was material."⁵ The State concedes that the first two prongs establishing a Brady violation have been met because the evidence is favorable to O'Neill as impeachment evidence and the evidence was withheld from him. The State argues, however, that O'Neill's claim fails on the third prong—prejudice.

After reviewing the record, we conclude that O'Neill's Brady claim lacks merit as O'Neill has not shown that he was prejudiced by the absence of the challenged evidence. Although the withheld evidence relates to Officer Cooper's credibility, O'Neill fails to demonstrate that the absence of the evidence prejudiced him in light of the other evidence

⁴State v. Bennett, 119 Nev. 589, 599, 81 P.3d 1, 7-8 (2003).

⁵Mazzan v. Warden, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000).

produced at trial establishing his guilt. In particular, Detective Michael Brown testified that he observed Officer Cooper recover two of the forged checks from O'Neill's person. In addition, Officer Adam Summers testified that he searched O'Neill's vehicle and found the other forged check. Based on this evidence, even without Officer Cooper's testimony, substantial evidence existed to convict O'Neill. Therefore, O'Neill has not shown that the evidence was material.

O'Neill also contends that the withheld evidence would have undermined the basis for the search. O'Neill argues that the false report mentioned in the letter was the basis for the search conducted by Officer Cooper, which resulted in the recovery of the forged checks. To bolster this claim, an affidavit from O'Neill alleges that Officer Cooper was extorting money from him. O'Neill claims that the only reason Officer Cooper ordered his detention was because he failed to pay Officer Cooper the money requested as part of the extortion scheme. However, there is no indication in the letter or in the record that the reason Officer Cooper ordered O'Neill detained was based on a false report, or when the false report was made in relation to the search. Moreover, the letter states that Officer Cooper falsely reported a negative urinalysis test, not a positive test. A negative test would not provide Officer Cooper with a reason to detain and search O'Neill. In addition, the allegations made by O'Neill regarding the extortion scheme were never presented to the district court prior to the motion for a new trial. The district court found that these allegations, in the letter and in the affidavit, would have merely been used to discredit Officer Cooper and therefore, in light of the substantial

evidence presented at trial, the evidence would not have altered the jury's verdict. We agree and conclude that O'Neill has failed to show that the withheld evidence was material.

Second, O'Neill argues that the district court abused its discretion in denying his motion for a new trial on the grounds of newly discovered evidence. Specifically, O'Neill contends that the information about Officer Cooper falsifying reports relating to O'Neill's parole and his subsequent firing undermined Officer Cooper's credibility and invalidated the basis for the stop and search of O'Neill that resulted in the instant convictions. This court will not disturb the decision of the district to deny a motion for a new trial based upon newly discovered evidence absent an abuse of discretion.⁶

We conclude that the district court did not err by denying O'Neill's motion for new trial based on newly discovered evidence because the evidence concerning Officer Cooper's false report was impeachment evidence, which cannot be the basis for a new trial.⁷ Therefore, the district court did not abuse its discretion in denying his motion for new trial on this basis.

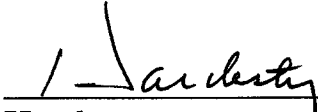
⁶McLemore v. State, 94 Nev. 237, 241, 577 P.2d 871, 873 (1978).

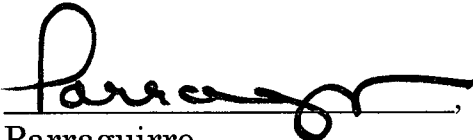
⁷Callier v. Warden, 111 Nev. 976, 988, 901 P.2d 619, 626 (1995) (citing Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284-85 (1991)).


The district court also did not abuse its discretion in denying the motion for new trial based on O'Neill's assertion that the search was based on fabricated evidence. As discussed above, O'Neill has not shown that a different result would be probable on retrial and therefore, the new evidence was not material.⁸

Having considered O'Neill's claims and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Steven P. Elliott, District Judge
Thomas L. Qualls
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁸Id.