STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1373

Odell Depreist Crawford, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed July 27, 2010
Affirmed
Minge, Judge

Hennepin County District Court
File No. 27-CR-01-006233

David W. Merchant, Chief Appellate Public Defender, Theodora Gaitas, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Minge, Presiding Judge; Klaphake, Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

MINGE, Judge

Appealing the denial of a petition for postconviction relief following a 2001 conviction for first-degree criminal sexual conduct, appellant argues that (1) the state's

failure to disclose that a DNA analyst mistakenly injected appellant's DNA into a sample in an unrelated case violated his due-process rights; and (2) the analyst's error is newly discovered evidence that justifies a new trial. We affirm.

FACTS

In 2001, appellant Odell Crawford was charged with and, after a jury trial, convicted of three counts of first-degree criminal sexual conduct for his assault on S.H., a minor, in violation of Minn. Stat. § 609.342, subd. 1(b), (c), (d) (2000).

Prior to trial, the district court granted a motion to suppress certain DNA evidence based on an unreliable chain of custody. DNA testing was done by both the Minnesota Bureau of Criminal Apprehension (BCA) and the Hennepin County Sheriff's office (HCS). Later in the trial, however, Crawford's counsel withdrew her objection to the DNA-test results. This was apparently done for strategic reasons: to argue the exculpatory implications of law enforcement's decision not to perform DNA testing on certain stained bed sheets.

Crawford has previously had four reviews of his convictions. Initially, Crawford directly appealed to this court. *State v. Crawford*, C4-01-2073, 2002 WL 31056664 (Minn. App. Sep. 17, 2002), *review denied* (Minn. Dec. 17, 2002) (*Crawford I*). In that appeal, he argued, among other things, that the district court committed plain error by admitting the DNA-test results without properly considering its reliability. *Id.* at *1. Without deciding whether it was error to admit the DNA evidence, *Crawford I* affirmed because (a) Crawford's decision to drop the objection was tactical and thus the issue was knowingly waived; and (b) Crawford "also failed to establish that the error was

prejudicial and affected the outcome of the case." *Id*. at *2-3 (citation omitted). We next rejected a postconviction appeal in 2004. *State v. Crawford*, No. A03-916, 2004 WL 193179 (Minn. App. Feb. 3, 2004) (affirming denial of new trial for ineffective assistance of counsel), *review denied* (Minn. Apr. 20, 2004) (*Crawford II*). Then, Crawford filed an unsuccessful habeas petition in federal court. *Crawford v. Minnesota*, No. Civ. 04-2822 JRTJGL, 2005 WL 1593038 (D. Minn. July 1, 2005), *aff'd*, 498 F.3d 851 (8th Cir. 2007) (*Crawford III*).

In late 2006, in relation to a different criminal prosecution, Crawford was informed that the BCA analyst who testified in his original trial had mistakenly transferred Crawford's DNA sample to a different defendant's sample. The error came to light during the other prosecution. The error was not noted in Crawford's BCA file and was not previously known to the original prosecutor or to Crawford's counsel. At the time Crawford became aware of the BCA's mistake, he was petitioning for habeas relief in state court, claiming that his Fifth Amendment rights were violated when the corrections department extended his sentence because he refused to discuss his crime. In the midst of that proceeding, Crawford argued that discovery of the BCA error would allow him to attack his conviction. *Crawford v. Fabian*, No. A07-2410, 2008 WL 4850071, *2 (Minn. App. Nov. 20, 2008) (*Crawford IV*). We rejected this claim, concluding that the BCA's mistake did not reveal that Crawford's DNA sample was altered in any way. *Id*.

In May 2008, Crawford initiated the present proceeding by petitioning for a new trial based on newly discovered evidence and violations of criminal-procedure rules and

due process. A BCA analyst who reviewed the BCA's original DNA work submitted an affidavit, concluding that the DNA "sample handling error did not taint the [DNA] results in [Crawford's case]." The district court—the same judge who presided over the original trial—denied the petition. This appeal followed.

D E C I S I O N

The court of appeals does not disturb a postconviction court's denial of a new trial absent an abuse of discretion. *State v. Hooper*, 620 N.W.2d 31, 40 (Minn. 2000). This review accepts findings if they are sustained by sufficient evidence. *Id*. Legal issues are reviewed de novo. *Pederson v. State*, 692 N.W.2d 452, 459 (Minn. 2005).

I.

Crawford first argues that the state's failure to disclose the BCA's error violates Minnesota Rule of Criminal Procedure 9.01 (2008) and due process. Rule 9.01 requires that the state, including those that investigate or evaluate the case, disclose any information within its possession or control that tends to reduce the guilt of the accused. Minn. R. Crim. P. 9.01, subd. 1(6), (8). Under *Brady v. Maryland*, the intentional or unintentional withholding of evidence favorable to the defense may also violate due-process rights.[1] 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963). A *Brady* violation has

[1] Because Crawford mainly argues his appeal under *Brady*, that case and its progeny provide the primary basis for our analysis. Moreover, because rule 9.01 and *Brady* protect against the same harm, the constitutional safeguards in *Brady* have been predominantly used to examine state action alleged to violate both the court rule and the constitutional standard. *E.g.*, *Walen v. State*, 777 N.W.2d 213, 216-18 (Minn. 2010); *see* Minn. R. Crim. P. 9.01 cmt (noting that rule provides for constitutionally required pretrial disclosure of exculpatory evidence). *But see State v. Miller*, 754 N.W.2d 686, 706 n.3 (Minn. 2008) (noting that state could comply with rule 9.01 but still violate *Brady*).

three elements: first, the evidence must be favorable to the accused; second, the evidence must have been suppressed by the state either willfully or inadvertently; and third, the absence of the evidence must have caused prejudice. *Stickler v. Greene*, 527 U.S. 263, 281-82, 119 S. Ct. 1936, 1948 (1999); *Pederson*, 692 N.W.2d at 459.

Here, the district court and the parties all agree that the first two *Brady* elements were met: the evidence of the BCA error is favorable to Crawford and was suppressed by the original BCA analyst. The district court, however, concluded that the prejudice element was not met. This is the main issue on appeal.

Prejudice under *Brady* exists if the suppressed evidence is "material"—i.e., creates a reasonable probability that, had the evidence been disclosed, the result at trial would have been different. *State v. Hunt*, 615 N.W.2d 294, 299 (Minn. 2000) (citing *United States v. Bagley*, 473 U.S. 667, 682, 105 S. Ct. 3375, 3383 (1985)). Determining materiality is a mixed question of fact and law which we review de novo. *Pederson*, 692 N.W.2d at 460. We consider the evidence within the context of the whole trial record. *Walen*, 777 N.W.2d at 216.

We first recognize that *Crawford I* already determined that the DNA evidence submitted by both the HCS and the BCA was unnecessary to support the conviction. 2002 WL 31056664 at *3 (citing Minn. Stat. § 609.347, subd. 1 (2000) (stating that victim's testimony need not be corroborated in sexual-assault prosecutions)). *Crawford IV* also found that the newly discovered evidence at issue here "is insufficient to show any appreciable likelihood that the DNA evidence in [Crawford's] trial was tainted." 2008 WL 4850071, at *2.

Our own review of the trial record also leads us to conclude that evidence of the BCA error was not material. S.H. gave detailed testimony corroborated by witness' descriptions of her demeanor, the consistency of her account, the verification of certain facts by the search of her house following Crawford's arrest, and evidence of Crawford's covering up of the evidence. There was also alternative DNA testing done by the HCS which found semen matching the DNA profile of Crawford on S.H.'s pajama bottoms and vaginal swabs. We also agree with the district court, and *Crawford IV*, that the record shows no testing error affecting Crawford's DNA sample even if the error affected a different defendant's sample. At most, the newly discovered BCA error merely impeaches the care with which material was handled in the DNA-testing process at the time appellant's case was prosecuted. Based on these considerations, we conclude that the district court did not err in denying relief based on *Brady* or rule 9.01.

II.

Next, we consider Crawford's claim that evidence of the BCA's error is "newly discovered evidence" that justifies a new trial. A new trial based on newly discovered evidence may be granted if the defendant proves the evidence (1) was unknown to the defendant or his counsel at the time of trial; (2) could not have been discovered through due diligence before trial; (3) is not cumulative or is impeaching or doubtful; and (4) would probably produce a more favorable result. *Rainer v. State*, 566 N.W.2d 692, 695 (Minn. 1997). Here, the district court again found the first two parts of the test were met but rejected the motion for a new trial because, without prejudice, the third and fourth parts were not satisfied.

Because we have already concluded that the DNA evidence was not material and was not prejudicial, the fourth part of the test is not met and the district court did not err by denying Crawford a new trial. *See Walen*, 777 N.W.2d at 217-18 (concluding that evidence deemed immaterial under *Brady* is similarly immaterial under fourth prong of newly discovered evidence test).

Affirmed.

Dated: