GARY WOODSIDE, JR.

On November 4, 1987, at about 6:15 p.m., 24-year-old U.S. Army Specialist Lafayette Trawick was performing maneuvers with four fellow soldiers on the grounds of Ft. Drum, a military training reservation in upstate New York, when he was shot and killed.

The four soldiers with Trawick told authorities that a sedan stopped on a dirt road about 80 feet from where they were standing. An occupant of the car fired a gun and then the vehicle sped off. Police found an expended shotgun cartridge on the road where the car had stopped.

Authorities suspected that Trawick had been shot by someone illegally hunting deer at night because Ft. Drum is in New York State's Northern Deer Hunting Zone and Whitetail deer hunting season was open.

On that day, there were 97 lawfully registered hunters on the Ft. Drum grounds. All of their guns were checked and were eliminated as the weapon that fired the slug and ejected the shell that was found.

The shooting was unsolved until September 1988, when James McAvoy, a longtime police informant, told the Jefferson County Sheriff's Department that shortly after the shooting, 20-year-old Gary Woodside, Jr. told McAvoy that Woodside and a friend were jacking deer on Ft. Drum and he feared he had shot a person. Jacking deer is an illegal practice of shining a light on a deer to make it freeze in its tracks so it can easily be shot.

McAvoy said Woodside told him that after he fired his shotgun, he realized he had fired at a man, not a deer. McAvoy said he did not reveal this information for nearly a year because he "had bad deals with the police before" and was reluctant to get involved in a criminal investigation.

On October 3, 1988, detectives sent McAvoy, with a secret tape recorder, to speak with Woodside. He found Woodside and they spoke for 45 minutes, although several minutes of the conversation were not recorded. Woodside made what sounded like admissions to shooting a soldier while jacking deer.

The detectives sent McAvoy back to see Woodside the following day with another recorder. Woodside made some statements that appeared to be related to disposing of a gun, but the tape was not clear. Woodside referred to McAvoy's brother several times. The detectives then brought Woodside to the sheriff's office and told him they had the recordings. Woodside said he knew he was being recorded and made the statements to play a practical joke on McAvoy's brother.

Despite his claim about making a joke, Woodside ultimately signed a written statement admitting he fired a shot while jacking deer from a Jeep pick-up truck in late October on a paved road with a bolt action shotgun with green hollow point slugs. The statement said Woodside thought he saw the eyes

State:	New York
County:	Jefferson
Most Serious Crime:	Manslaughter
Additional Convictions:	
Reported Crime Date:	1987
Convicted:	1989
Exonerated:	2007
Sentence:	1 1/3 to 4 years
Race:	Caucasian
Sex:	Male
Age:	20
Contributing Factors:	False Confession, Perjury or False Accusation
Did DNA evidence contribute to the exoneration?:	No

of a deer, fired once, thought he missed and then left the scene.

The statement was notable because, according to the witnesses, the shot was fired from a sedan not a pickup truck, the incident occurred in November not October, the road was dirt not paved, and the shell recovered from the road was yellow not green.

Woodside was arrested and charged with criminally negligent homicide. While he was awaiting trial, a cellmate named Robin Graves told authorities that Woodside had confessed to shooting Trawick and that he had purchased Woodside's gun from him after the shooting and later resold it. Police tracked down the person to whom Graves said he sold the gun and the man said he never purchased a gun from Graves.

Woodside went on trial in Jefferson County Supreme Court in April 1989. The prosecution's case primarily consisted of McAvoy's testimony and Woodside's signed confession.

Woodside presented several alibi witnesses who said he was with them at a chili and pork chop supper and birthday party.

On April 6, 1989, the jury convicted Woodside and he was sentenced to 1 1/3 to four years in prison. During the sentencing hearing, Woodside's lawyer disclosed that Woodside had taken and passed a polygraph examination.

A week after the conviction, Woodside was charged with arson for setting a fire at a farm where he had formerly worked. Woodside pled guilty to arson and was sentenced to probation and $134,000 in restitution.

Woodside was released on parole on January 29, 1992.

In 2004, more than 12 years later, the New York State Police received a telephone call from James B. Roberts, who said he had information on the shooting of Trawick. The investigation of Trawick's death was re-opened.

Roberts told police that in 1987, he was 21 and his brother Joseph was 17. At the time, they lived on Ft. Drum with their mother, an officer who was stationed there. James Roberts said Joseph shot at what looked like deer eyes and then they heard someone yell, "Stop it!"

James Roberts said they heard no more sounds and saw no movement, so they went home.

Authorities recovered the shotgun the two men said was the weapon they used that night. Forensic analysis was unable to eliminate the weapon as the gun that fired the slug that killed Trawick. After being provided further details about the case, Joseph Roberts gave police a statement saying that the information "causes me to believe that I am the person who shot the soldier that night." Neither of the brothers faced criminal prosecution because the statute of limitations had run for criminally negligent homicide.

Woodside's lawyers filed a motion to set aside his conviction. The prosecution opposed the motion, arguing that a jail inmate told their investigator that the man who was hunting with Woodside on the day of the shooting had confessed he was involved in a deer jacking that resulted in the death of a soldier.

On June 27, 2007, Supreme Court Judge Kim Martusewicz granted Woodside's motion. The judge vacated Woodside's conviction and dismissed the indictment.

Woodside later filed a lawsuit seeking compensation in the New York Court of Claims, but the suit was dismissed.

– *Maurice Possley*

Report an error or add more information about this case.

Posting Date: 12/20/2013

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New York State Court of Claims

WOODSIDE v. STATE OF NEW YORK, # 2011-018-234, Claim No. 116768, Motion No. M-79594

Synopsis

Claimant brought a claim for unjust conviction under § 8-b of the Court of Claims Act. Defendant opposed the motion. As a matter of law, even accepting Claimant's version of events, he will be unable to prove by clear and convincing evidence that the taped and written confessions were not contributing factors to his conviction. Defendant's motion is GRANTED and the claim is dismissed.

Case information

UID:	2011-018-234
Claimant(s):	GARY WAYNE WOODSIDE, JR.
Claimant short name:	WOODSIDE
Footnote (claimant name) :	
Defendant(s):	STATE OF NEW YORK
Footnote (defendant name) :	
Third-party claimant(s):	
Third-party defendant(s):	
Claim number(s):	116768
Motion number(s):	M-79594
Cross-motion number(s):	
Judge:	DIANE L. FITZPATRICK
Claimant's attorney:	FRENCH-ALCOTT, PLLC By: Lee Alcott, Esquire
Defendant's attorney:	ERIC T. SCHNEIDERMAN Attorney General of the State of New York By: Michael R. O'Neill, Esquire Assistant Attorney General
Third-party defendant's attorney:	
Signature date:	September 21, 2011
City:	Syracuse
Comments:	
Official citation:	
Appellate results:	
See also (multicaptioned case)	

Decision

Claimant brought a claim for unjust conviction under § 8-b of the Court of Claims Act. Defendant filed a motion for summary judgment seeking an Order dismissing the claim on the ground that it was Claimant's own culpable conduct that resulted in his conviction as a matter of law. Claimant opposes the

motion and asserts that there are questions of fact that must be resolved at trial.

Court of Claims Act § 8-b creates a means for persons who have been wrongly convicted and imprisoned to seek legal redress and damages against the State. As a legislatively created right of action, very specific pleading and proof requirements are set forth in the statute which must be met in order to withstand dismissal. In order to succeed on his claim for unjust conviction and imprisonment, Claimant must establish by clear and convincing evidence - a higher burden than required for an ordinary civil trial - that: (1) he has been convicted of a felony or misdemeanor, sentenced to a term of imprisonment and has served at least a part of that term; (2) he has since been pardoned on the ground of innocence or his judgment of conviction reversed or vacated, and the accusatory instrument dismissed on one of the grounds specified in the statute; (3) he did not commit any of the acts charged in the accusatory instrument, or his acts or omissions charged in the accusatory instrument did not constitute a felony or misdemeanor and; (4) he did not, by his own conduct, cause or bring about his own conviction. In this case, it is the last requirement, whether Claimant, by his own conduct, caused or contributed to his own conviction that is at issue.

In 1989, Claimant was convicted of Criminally Negligent Homicide, sentenced to one and one-third to four years in State prison, and he served 34 months of that sentence. He was convicted of the shooting death of United States Army Specialist Lafayette Trawick at Fort Drum, New York on November 4, 1987. It was primarily Claimant's taped and separately written confession that linked him to this crime.

On November 4, 1987, at approximately 6:15 p.m., Specialist Trawick and three other soldiers were engaged in a practice maneuver and were approximately 18 feet off the southern side of Pleasant Street Road on Fort Drum when a vehicle with its headlights on approached their location. The vehicle stopped on the road and pointed its headlights into the swampy grass area where the soldiers were. A single gun shot was fired. Specialist Trawick was the only soldier hit, later dying from his injuries. After firing the shot, the car sped off in a southerly direction on Pleasant Street Road. The soldiers with Specialist Trawick all described a light colored, small car with two headlights. An investigation into the shooting did not produce any viable suspects.

Almost a year later, on or about September 28, 1988, James McAvoy contacted the Jefferson County Sheriff's Department indicating that he had information regarding the shooting death of Specialist Trawick. On September 30, 1988, McAvoy met with investigators from the Sheriff's Department and gave a statement indicating that Claimant had told him that he and some friends were out jacking deer on Fort Drum, when he shot at what he thought was a deer but turned out to be a man. McAvoy agreed to try to obtain a confession from Claimant regarding the incident.

On October 3, 1988, McAvoy was fitted with a recording device by the Sheriff's Department and proceeded to seek out Claimant. He went to Claimant's residence and spoke with him for roughly 45 minutes. Only approximately eight minutes of their conversation was recorded that day due to either the malfunctioning of the recording device or some other failure. Nonetheless, the tape recorded Claimant making admissions regarding jacking deer on Fort Drum in 1987 and mistakenly shooting a man. That tape also reflects that Claimant was aware he was being recorded. The next morning, October 4, 1988, a new recording device was placed upon McAvoy and he sought out Claimant again. During this conversation, there was some discussion about where Claimant may have placed the gun. This time, Claimant did not know that he was being taped. The officers went to Claimant's residence later that same day and took him down to the police station at approximately 3 o'clock. Around 4:25 p.m., Claimant had signed a written statement confessing, in detail, to shooting Specialist Trawick by mistake, while jacking deer on Fort Drum. Claimant, a high school graduate, reads and writes, and acknowledges reading his statement before he signed it.

There were several factual discrepancies between Claimant's statement and the recovered evidence or the witnesses' statements that the police had obtained. Specifically, the vehicle Claimant described riding in was a loud Jeep pickup truck, not a small light colored car; Claimant described the shell casing he used as green, whereas the shell casing found by the scene was yellow; Claimant described the road as a

secondary road, paved with no signs and tall grass before a line of pine trees, while Pleasant Street Road is a gravel road adjacent to a grassy swamp area with a far edge of trees of mixed hard woods and pine trees.

Claimant's testimony at his criminal trial, in a deposition for this claim, and in his opposing affidavit on this motion indicates that the reason he confessed to shooting Specialist Trawick was because James McAvoy asked him to play a joke on McAvoy's brother and he agreed. He maintains that he knew he was being taped because he thought it was part of the joke. Claimant does not explain the signed confession in any of the documents presented with his claim or in response to this motion. At his trial, he testified that he gave the confession because he was being "threatened" that if he didn't, he would be charged with Murder in the Second Degree. He testified he would rather give a false statement than be charged with Murder. He also claimed to have an alibi on the date and time of the shooting, as he claimed he was at a birthday party.

Well-after Claimant was released from prison for this conviction, in January 2004, the State Police received a call from James B. Roberts, who indicated that he and his brother, Joseph A. Roberts, were involved in the shooting of the Fort Drum soldier in November, 1987. The details these brothers provide are consistent with the scene of this incident, the evidence that was found, and the witnesses' accounts. The gun the brothers described that they used is the only gun, of the many tested, that could not be excluded as the weapon used to fire the deadly shot.

It is Defendant's position on this motion, that despite factual discrepancies involved with what actually happened that evening of November 4, 1987, Claimant freely participated in a recorded conversation in which he admits killing the soldier by mistake while jacking deer. Even if it was supposed to be a joke, Defendant argues it cannot be found that such action did not influence the jury leading to his conviction. As a result, he cannot prove the requirements necessary to establish an unjust conviction claim under the statute, and the claim must be dismissed as a matter of law.

Claimant, in opposition, relies on *Warney v State of New York,* 16 NY3d 428 (2011), arguing that he has provided a plausible explanation for his confession, raising issues of fact and credibility which must be resolved at trial.

The obligation of the Court on a summary judgment motion is to identify factual issues which need to be resolved at trial. In reviewing the evidence presented, the Court must assess it in a light most favorable to the opposing party (*Iwaszkiewicz v Callanan Indus.,* 258 AD2d 776, 777 [3d Dept 1999]).

The question is whether the Defendant has established, as a matter of law, that Claimant will be unable to establish, by clear and convincing evidence at trial, that his own conduct did not cause or bring about his conviction. The Court must accept as true Claimant's allegations. Issues of credibility, the weight to be given to the evidence, or whether Claimant's actions proximately led to his conviction are questions that should be determined by a trial (*Warney,* 16 NY3d at 436-437).

In this case, the only evidence that linked Claimant to the crime is his confessions.[(1)] Nothing else showed Claimant to be the shooter that evening; no physical evidence and no identifying witness's testimony. Claimant, by bringing this claim, asserts that his confessions were meant to be a joke. Mr. McAvoy asked Claimant to help him trick his brother into thinking that Claimant was the killer, an inside joke, however distasteful, between acquaintances. Accepting Claimant's position as true, as the Court must do at this point in the proceedings, this is Claimant's explanation for why he confessed to committing a crime he didn't actually commit, not once but on three separate occasions. The result of accepting Claimant's version of events is that it amounts to an uncoerced confession of the crime. In other words, it was Claimant's own conduct which led to his conviction.

The Law Revision Commission, in its report (McKinney's 1984 Session Laws of New York, at 2932), gave examples of the type of conduct that would bar recovery under the statute: giving an uncoerced confession of guilt, removing evidence, attempting to induce a witness to give false testimony, attempting

to suppress testimony, or concealing the guilt of another. This list has been held to only be illustrative, (*Moses v State of New York,* 137 Misc 2d 1081, 1085 [Ct Cl 1987]), as the legislature left to the judiciary the job of determining case-by-case what conduct would be found to disqualify a Claimant from recovery under the statute (*Rogers v State of New York,* 181 Misc 2d 683, 686, [Ct Cl 1999], *affd* 280 AD2d 930 [4th Dept 2001]).

It has repeatedly been found that the personal conduct of a Claimant engaging in a course of action of his own volition will defeat recovery under the statute. For example, directing that certain witnesses not be called (*Williams v State of New York,* 87 NY2d 857 [1995]); engaging in a discussion with off-duty police officers regarding getting them "dime" and "twenty" bags of drugs under the guise of "playing along" not to sell them drugs, but to get their money (*Mike v State of New York,* 11 Misc 3d 384 [Ct Cl 2005]); the failure to properly deposit money in accordance with the Lien Law (*Rogers v State of New York,* 181 Misc 2d at 688); providing a false alibi (*Moses,* 137 Misc 2d at 1081, 1086); providing a false confession, even if the result of a behavioral condition (*Ausderau* v *State of New York,* 130 Misc 2d 848, 852, *affd* 127 AD2d 980 [4th Dept 1987], *lv denied*, 69 NY2d 613 [1987]), have all been found to foil an unjust conviction and imprisonment claim.

Claimant's willingness to go along with the "joke" and confess to killing a soldier, clearly falls into the category of conduct which was intended to preclude recovery under the statute. As it is not only innocence of the crime convicted, but also innocence from any personal behavior that led to the conviction that must be shown in order to be successful on this claim. Claimant clearly cannot establish this requirement at trial, even accepting his version of events.

Claimant's reliance on *Warney* to argue that his claim must proceed to trial is misplaced. In *Warney,* Claimant asserted that he had limited mental capacity and that his confession was coerced. A confession obtained using coercive tactics and threats is not the result of the Claimant's own conduct, but rather the undue influence exerted by the police (*Warney,* 16 NY3d at 436; *Lluveras v State of New York,* 136 Misc 2d 171 [Ct Cl 1987]*; Ausderau,* 130 Misc 2d at 850). Accepting everything Claimant asserts as true, the "joke" between Claimant and his acquaintance is not even alleged to be coerced. It is not the result of anything other than Claimant's personal willingness to be a key party to an opprobrious joke. Moreover, although this explanation could explain Claimant's confession on October 3, 1988, it does not as easily explain Claimant's October 4, 1988 confession describing where he disposed of the gun. On that second day, Claimant did not know that he was being recorded. It also defies any rational mental process to conclude that Claimant could have thought the "joke" continued when the police became involved. In fact, Claimant has wholly failed to present any allegation in his claim or response to this motion explaining what led him to sign a written confession at the police station. It is only in the transcript from the criminal trial that any explanation is offered.

At the criminal trial, Claimant stated that the reason that he signed the written confession at the police station was because one of the officers told him that if he didn't say what the officers wanted to hear, he would be charged with Murder in the Second Degree. Since he didn't want to be charged with murder, he falsely confessed to shooting the soldier. He would rather be charged with providing a false statement, a Class A misdemeanor than Murder in the Second Degree, a Class A-I Felony. Although whether a confession is coerced is often a question of fact or credibility, dependent upon the circumstances, in this case, no such issue is raised. After *Warney* it could be read that the assertion that a confession is the result of threats - in effect coerced - could, in almost every case, raise such an issue requiring a trial and preventing almost all determinations by motion. Yet, the concurring opinion in *Warney* makes it clear that allegations that are "implausible or unconvincing on their face" should not prevent the dismissal of an unjust conviction and imprisonment claim[(2)] (*Warney,* 16 NY3d at 439).

Here, Claimant's assertion at trial that his written confession was the result of the police "threatening" to charge him with Murder in the Second Degree if he didn't confess is simply untenable. How confessing to shooting and killing a person would not be seen as more serious than making a false statement is simply implausible on its face. There is also no question that these confessions led to Claimant's

conviction, as they were the primary evidence connecting him to this crime.

As a result, as a matter of law, even accepting Claimant's version of events, he will be unable to prove, by clear and convincing evidence, at trial that the taped and written confessions were not contributing factors to his conviction.

Accordingly, Defendant's motion is GRANTED and the claim is dismissed.

September 21, 2011
Syracuse, New York

DIANE L. FITZPATRICK
Judge of the Court of Claims

The Court has considered the following in deciding this motion:

1) Notice of Motion.

2) Affirmation of Michael R. O'Neill, Esquire, in support, with exhibits attached thereto.

3) Affidavit of Gary Wayne Woodside, Jr., sworn to May 11, 2011, in opposition.

4) Claimant's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment dated May 17, 2011.

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1. Claimant also allegedly confessed to James McAvoy the day after the shooting and to a Robert Graves, who allegedly purchased a 20-gauge shotgun from Claimant, sometime in November 1987. Claimant denies he made these admissions, and Defendant does not argue they were part of the Claimant's conduct which led to his conviction for purposes of this motion.

2. Although the Court of Appeals in *Warney* was discussing this issue within the context of a CPLR 3211 motion to dismiss, the discussion is no less relevant on a motion for summary judgment.