

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,	)	
	)	
Plaintiff,	)	
	)	
	)	Cr. ID No. 0408028022
v.	)	
	)	
DWAYNE STAATS,	)	
	)	
Defendant.	)	

Submitted: February 22, 2012  
Decided: May 17, 2012

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT  
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF  
SHOULD BE SUMMARILY DISMISSED.**

Andrew J. Vella, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Dwayne Staats, James T. Vaughn Correctional Center, Smyrna, Delaware, *pro se*.

PARKER, Commissioner

This 17th day of May 2012, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

**PROCEDURAL HISTORY**

1. On September 7, 2004, Defendant Dwayne Staats was charged with Murder in the First Degree and Possession of a Firearm During the Commission of a Felony. Following a six day jury trial in the Superior Court, in July 2005, Defendant was found guilty of both charges. On September 30, 2005, Defendant was sentenced to life in prison at Level V without the possibility of parole or probation on the murder conviction and to ten years in prison at Level V on the weapons conviction.

2. Defendant filed a direct appeal from his convictions with the Delaware Supreme Court on October 14, 2005. The Delaware Supreme Court affirmed Defendant's convictions and sentence on direct appeal.<sup>1</sup> The Delaware Supreme Court issued its mandate on July 24, 2006.

3. In July 2007, Defendant filed a motion for postconviction relief pursuant to Rule 61, which was denied by the Superior Court on March 28, 2008.<sup>2</sup> Defendant appealed the Superior Court's denial of his motion for postconviction relief to the Delaware Supreme Court. On appeal, the Delaware Supreme Court found Defendant's postconviction relief claims to be without merit and it affirmed the Superior Court's denial of Defendant's motion for postconviction relief.<sup>3</sup>

4. In February 13, 2012, Defendant filed the subject motion for postconviction relief. In the subject motion Defendant contends that he should be entitled to a new trial based on the recantation of a portion of a witness' trial testimony. Defendant attached as

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<sup>1</sup> *Staats v. State*, 902 A.2d 1125 (Del. 2006).

<sup>2</sup> Superior Court Docket No. 64.

<sup>3</sup> *Staats v. State*, 961 A.2d 514 (Del. 2008).

Exhibit A to his Rule 61 motion a letter dated March 5, 2011 purportedly signed by Julian Ray in which Mr. Ray seeks to recant a portion of his trial testimony. The letter is not signed under oath, it is not signed under penalty of perjury, it is not an Affidavit, and it is not a sworn statement.

## **FACTS**

5. Defendant's convictions arise from an incident that occurred on April 16, 2004. The facts, as set forth by the Delaware Supreme Court on Defendant's direct appeal, are discussed herein.<sup>4</sup>

6. On April 16, 2004, Julian Ray rented a car for the day and drove around New Castle County. Sometime after 2:00 p.m., Ray saw Defendant Staats at 4<sup>th</sup> and Madison Streets in Wilmington. Ray had known Staats for at least ten years. Staats, who was wearing jeans, a sweatshirt hoodie and a red baseball cap, approached the car and asked to be taken to 7<sup>th</sup> Street. Ray dropped Staats off at 7<sup>th</sup> and Washington Streets before turning right onto Washington Street.<sup>5</sup>

7. Another acquaintance, Kia, and her mother, Sarah Wright, saw Staats as their car was turning right onto Washington Street from 7<sup>th</sup> Street. Kia and Wright said "Hi" to Staats, who replied briefly. Wright testified that Staats was wearing a hoodie and a red baseball cap.<sup>6</sup>

8. Diavonna Moulden, who was living at 7<sup>th</sup> and Washington Streets, was outside when she saw the victim, Hakim Crawford, come up from 7<sup>th</sup> Street across the parking lot with a man wearing a grey hoodie and a red baseball cap. A few minutes later, Moulden

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<sup>4</sup> See, *Staats*, 902 A.2d at 1126-1127.

<sup>5</sup> *Staats*, 902 A.2d at 1126-1127.

<sup>6</sup> *Id.*

heard a gunshot. She turned and saw the man in the red cap shoot Crawford three times, and stand over Crawford for the final shot.<sup>7</sup>

9. After shooting Crawford, the man in the red cap ran down Washington Street and turned left on 6<sup>th</sup> Street. Almost immediately after Wright heard the gunshots, she saw Staats running down Washington Street, appearing to be putting a black gun into his pocket. Ismael Torres, Shane Farley and Nicholas Maidanso also saw a man with a red baseball cap running down Washington Street and turning left onto 6<sup>th</sup> Street immediately following the shooting. Torres saw the man in the red cap with a black gun as he ran.<sup>8</sup>

10. Farley saw a cell phone on the ground where the man in the red cap had turned the corner onto 6<sup>th</sup> Street. Farley turned the phone over to the police. The cell phone was billed to Steven Williams, Staats' uncle, at the address where the mother of Staats' child lived.<sup>9</sup>

11. Wright saw Staats again, as she and her daughter turned onto 4<sup>th</sup> Street. Wright watched as Staats got into Ray's car, noticing that Staats was no longer wearing the red baseball cap. The police discovered the red baseball cap in the courtyard of the Friends' Meeting House at 4<sup>th</sup> and West Streets. Subsequent testing determined that Staats was a potential contributor to the DNA mixture that had been analyzed from the inside of the baseball cap.<sup>10</sup>

12. Ray had been driving down Washington Street heading toward 4<sup>th</sup> Street when he saw Staats running across the street at the intersection of 4<sup>th</sup> and Washington Streets. Ray turned onto 4<sup>th</sup> Street, and when he came to the light at 4<sup>th</sup> and West Streets, he

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

beeped his horn. Staats turned, saw who was there, and got into Ray's car. Ray testified that Staats was tired and out of breath.<sup>11</sup>

13. Staats asked to be taken to Wellington Woods in Bear, Delaware. Ray told Staats that he could not take him all the way to Bear. Ray took Staats to 8<sup>th</sup> and Walnut Streets, from where Staats could catch a bus. Before Staats got out of the car, Ray gave him a sweat jacket as Staats requested.<sup>12</sup>

14. None of the facts set forth above are the subject of the pending motion. Ray does not purportedly seek to recant any of the facts discussed above.

15. From these facts set forth above, the trial record established that Ray dropped Staats off a block away from where the murder took place, moments before it occurred. Staats was wearing a red baseball cap at the time. Ray dropped Staats off at 7<sup>th</sup> and Washington Streets. Sarah Wright was an acquaintance of Staats. She saw Staats at 7<sup>th</sup> and Washington Street and said hello to him. Ray's testimony was consistent with Wright's testimony, that Staats was wearing a hoodie and a red baseball cap.

16. An eyewitness to the shooting, Diavonna Moulden, saw the man in the red cap shoot the victim, Hakim Crawford three times and stand over Crawford for the final shot. Immediately after the shooting, the eyewitness to the shooting, Diavonna Moulden, saw the man with the red baseball cap run towards 6<sup>th</sup> Street.<sup>13</sup> The only person wearing a red baseball cap was the person who shot Crawford. There was no other person around when the shooting occurred. Just the shooter, the man in the red baseball cap, and the victim, Hakim Crawford.<sup>14</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See, July 20, 2005 Trial Transcript, pgs. 43-44.

<sup>14</sup> See, July 20, 2005 Trial Transcript, pg. 44.

17. Four other witnesses (Sarah Wright, Ismael Torres, Shane Farley and Nicholas Maidanso) also saw the man in the red baseball cap running away from where Crawford was shot immediately after they heard the gunshots.

18. One of these witnesses, Ismael Torres, saw the man with the red cap running with a black gun. Another witness, Sarah Wright, also saw Staats running and appearing to be putting a black gun into his pocket. A third witness, Shane Farley, saw a cell phone on the ground where the man in the red cap had turned the corner onto 6<sup>th</sup> corner. The cell phone was later linked to Staats.<sup>15</sup>

19. Wright saw Staats again as she and her daughter turned onto 4<sup>th</sup> Street. Wright watched as Staats got into Ray's car and noticed that Staats was no longer wearing his red baseball cap. The police found Staats red baseball cap in the courtyard of the Friends' Meeting House at 4<sup>th</sup> and West Streets. Staats got into Ray's car tired and out of breath and asked to be taken out of town. Staats also asked for Ray's sweat jacket.

20. It is reiterated and again emphasized that all of the testimony set forth above is not at issue in this motion.

21. The portion of the trial testimony that Ray seeks to recant will now be discussed. At trial, Ray further testified that when Staats got into his car and asked to be taken out of town, Staats told Ray that he had "just shot the nigger" because "he tried to play me." Ray testified that Staats also told him that Crawford owed Staats \$120.00.<sup>16</sup> It is this portion of his trial testimony that Ray purportedly seeks to recant in his March 5, 2001 letter.

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<sup>15</sup> See, *Staats*, 902 A.2d at 1129.

<sup>16</sup> See, *Staats*, 902 A.2d 1127.

22. In the unsworn March 5, 2011 letter, Ray purportedly contends that Staats told him he was a witness to the shooting and that he ran away in fear even though he did not recognize the shooter because he did not want to be labeled as a “snitch.” Ray contends that he did not know whether or not to believe Staats. Ray contends that he lied about the conversation he had with Staats in the car after the shooting and that Staats never told him he shot the victim.<sup>17</sup> Ray contends that he thought by lying at trial about a conversation he had with Staats he was doing the right thing and he was also hoping to get a break with pending charges against him.<sup>18</sup>

### **JULIAN RAY’S TRIAL TESTIMONY**

23. Ray testified at trial on July 21, 2005 and July 22, 2005. Ray was brought to the courthouse to testify in the subject trial from prison where he was serving time on drug charges.<sup>19</sup> Ray is a close family friend of Staats and they have known each other for at least ten years.<sup>20</sup> After the shooting, when Ray first spoke to the police, Ray told the police he had not seen Staats that day and did not know anything about the shooting. Ray testified at trial that he told a lot of lies to the police that day.<sup>21</sup>

24. On April 27, 2004, drug charges were brought against Ray and he was arrested and incarcerated. On April 27, 2004, Ray was again questioned by the police about the shooting. On April 27, 2004, Ray again denied having any knowledge about the shooting. Ray testified at trial that he was not honest with the police and told them a lot of lies.<sup>22</sup>

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<sup>17</sup> See, Exhibit A to Defendant’s Rule 61 Motion.

<sup>18</sup> See, Exhibit A to Defendant’s Rule 61 Motion.

<sup>19</sup> July 21, 2005 Trial Transcript, pg. 28.

<sup>20</sup> July 21, 2005 Trial Transcript, pgs. 36-38.

<sup>21</sup> July 21, 2005 Trial Transcript, pgs. 47, 67, 80-106; July 22, 2005 Trial Transcript, pg. 54.

<sup>22</sup> July 21, 2005 Trial Transcript, pgs. 59-60, 107-118; July 22, 2005 Trial Transcript, pgs. 9-10, 30-34, 48-50, 122.

25. Ray was facing over 20 years of prison time on the drug charges and knew if he cooperated with the police he could help himself on the drug charges. He knew that people who cooperated with the police were not liked on the street, but he decided he needed to look out for himself.<sup>23</sup>

26. On August 23, 2004, while the drug charges against Ray were pending, he talked to the police.<sup>24</sup> Ray told the police that on the day of the shooting he had dropped Staats off at 7<sup>th</sup> and Washington Streets. Ray then saw Staats running across the street again at the intersection of 4<sup>th</sup> and Washington. Staats got into Ray's car and was tired and out of breath.<sup>25</sup> Staats asked to be taken to Wellington Woods in Bear, Delaware. When Ray asked him why he needed to go to Wellington Woods, Staats said, "I just shot that nigger." When Ray asked Staats why he shot the person, Staats said "Man, he tried to play me." Staats said the person he shot owed him money. Staats told Ray he was owed \$120.<sup>26</sup>

27. Staats asked Ray to take him to Bear, Delaware. Ray was concerned that he would be implicated in the shooting because he was driving the "getaway" car. Ray told Staats that he would only take him to the bus stop at 8<sup>th</sup> and Walnut. Ray also gave Staats his sweat jacket.<sup>27</sup>

28. On February 28, 2005, Ray entered a guilty plea on his drug charges. He was sentenced to three years in prison. Part of his plea agreement was that he cooperate with

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<sup>23</sup> July 21, 2005 Trial Transcript, pgs. 41-42, 61; July 22, Trial Transcript pgs. 9-10, 24-27, 55-56.

<sup>24</sup> July 21, 2005 Trial Transcript, pg. 50; July 22, 2005 Trial Transcript, pgs. 34-36.

<sup>25</sup> July 21, 2005 Trial Transcript, pgs. 51-55.

<sup>26</sup> July 21, 2005 Trial Transcript, pgs. 53-58.

<sup>27</sup> July 21, 2005 Trial Transcript, pgs. 55-57.

the State in this murder trial. Ray was testifying at the subject trial because he had no choice. He had to do what was best for him.<sup>28</sup>

29. Defendant's trial counsel thoroughly and effectively cross-examined Ray and questioned him in detail concerning all his contradicting statements and his motivation for his trial testimony. The defense strongly attacked Ray's credibility.<sup>29</sup>

30. Defense trial counsel conducted a thorough and effective cross-examination of Ray.<sup>30</sup> Ray's credibility was so effectively and thoroughly discredited that, during closings, both the defense and the State agreed that Ray was a liar and a bad guy.

31. Indeed, during Closing Summation the State said:

Julian Ray is exactly what [defense counsel] told you, he is a liar. He is a bad guy. . . . We know some things that Julian Ray did that are corroborated by Sarah Wright. We know Julian Ray gave him a ride from the scene, gave Dwayne Staats a ride. We know that. We know Julian Ray was there. We know that Dwayne Staats got into the car with Julian Ray because Sarah Wright told you. Julian can't lie about that. He can lie about a lot of things. If you want to believe him, believe him. If you don't want to believe him, don't believe him.<sup>31</sup>

The State also said:

If you don't like what Julian Ray had to say, throw it out. He is a liar. Throw it out. What do you lose? A mode of evidence. And maybe we don't know why, we don't know why Hakim Crawford was killed, but we know that Diavonna Moulden saw the guy in the red hat, that red hat, shoot Hakim Crawford . . . we don't have to show or prove motive. We have to prove. . . beyond a reasonable doubt that Dwayne Staats shot and killed Hakim Crawford.<sup>32</sup>

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<sup>28</sup> July 21, 2005 Trial Transcript, pgs. 41-42, 61; July 22, 2005 Trial Transcript, pgs. 24-27, 49, 55-56.

<sup>29</sup> See July 21, 2005 Trial Transcript, pgs. 62-124; July 22, 2005 Trial Transcript, pgs. 9-56.

<sup>30</sup> See July 21, 2005 Trial Transcript, pgs. 62-124; July 22, 2005 Trial Transcript, pgs. 9-56.

<sup>31</sup> July 26, 2005 Closings Transcript, pgs. 62-63.

<sup>32</sup> July 26, 2005 Closings Transcript, pgs. 68-69.

## **DEFENDANT'S POSTCONVICTION CLAIM**

32. Defendant, in the subject motion for postconviction relief, contends he is entitled to a new trial based on a letter dated March 5, 2011, purportedly written by Julian Ray. In that letter Mr. Ray contends that his trial testimony about the conversation he had with Defendant Staats after the shooting was not true. Mr. Ray contends that he lied at trial when he testified that Staats told him that Staats had just shot a person because he was owed money. Mr. Ray contends in that letter that he thought Staats had shot the person and so he lied at trial that Staats told him that he had.

33. A motion for a new trial based upon a witness' recantation is generally viewed with suspicion.<sup>33</sup> A denial of such a motion will not be reversed on appeal unless there has been an abuse of discretion by the trial court.<sup>34</sup>

34. It is first noted that, in this case, the letter of March 5, 2011, was not provided under oath, it was not a sworn statement, it is not an Affidavit, and Ray did not subject himself to the penalty of perjury for the contents therein. As a practical matter, the court does not know whether it was actually Ray who wrote the letter. The court will not grant a new trial on unsworn and unsupported assertions. Moreover, the letter does not contend that Defendant is innocent of the charges, it merely contends that Ray does not know whether Defendant is guilty or innocent. The letter of March 4, 2011 is not a sufficient attempt to recant trial testimony, which was given under oath and given under penalty of perjury. For this reason, in and of itself, Defendant's motion for a new trial should be denied.

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<sup>33</sup> *Blankenship v. State*, 447 A.2d 428, 433 (Del. 1982).

<sup>34</sup> *Blankenship v. State*, 447 A.2d 428, 433-35 (Del. 1982).

35. Even if the Defendant was able to overcome the threshold issue that the March 5, 2011 letter should even be considered by the court as a sufficient attempt by a trial witness to recant his trial testimony, Defendant's motion still must fail since Defendant cannot meet the *Larrison* test for the granting of a new trial.

36. The Delaware Supreme Court adopted the test set out in *Larrison v. United States*, 24 F.2d 82 (7<sup>th</sup> Cir. 1928) to determine whether a motion for a new trial based on recanted testimony should be granted.<sup>35</sup> Under this standard a new trial should be granted if:

(a) the court is reasonably well satisfied that the testimony given by a material witness is false;

(b) without the testimony, the jury might have reached a different verdict; and

(c) the party seeking the new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial.<sup>36</sup>

37. Defendant must satisfy all three prongs of the *Larrison* test to warrant a new trial. Because Defendant cannot satisfy the second prong of *Larrison* test, Defendant's motion should be denied without the necessity of also evaluating whether any of the other prongs of the test have been met.

38. Defendant cannot satisfy the second prong of the *Larrison* test. The second prong, that without the testimony, the jury might have reached a different verdict, has not been met in this case.

39. First, Ray admittedly lied so many times to the police and his trial testimony was so thoroughly discredited that both defense counsel and the State characterized Ray as a

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<sup>35</sup> *Blankenship*, 447 A.2d at 434.

<sup>36</sup> *Id.*

liar and a bad guy. Even the State told the jury that it did not care if the jury wanted to disregard Ray's testimony in its entirety given the fact that he constantly lied. The only evidence that Ray offered, that was not corroborated by other witnesses, was his testimony regarding Defendant's motive for shooting the victim. If the jury believed Ray's testimony then it knew why Defendant shot the victim. If the jury did not believe Ray's testimony at trial that it did not know why Defendant shot the victim. All other aspects of Ray's trial testimony was redundant to the eyewitness testimony of the other witnesses who saw that Defendant shot Hakim Crawford and then ran away.

40. Irrespective of Ray's trial testimony, the jury would still have convicted Defendant because, whether or not the jury knew Defendant's motive for doing so, given the overwhelming number of witnesses, eyewitness accounts, corroborating testimony and physical evidence the State established that Defendant did, in fact, shoot and kill Hakim Crawford.

41. Indeed, Diavonna Moulden saw the guy in the red hat shoot Hakim Crawford. There was no one else around at time of the shooting. Only the shooter, the guy with the red hat, and the victim. All the other witnesses saw the guy with the red hat running away. Witnesses saw the guy with the red hat running away with a gun and a witness found the guy in the red hat's cell phone which was linked to Staats. The guy with the red hat discarded his distinctive red hat and it was found and linked to Staats. One of the witnesses' knew Staats and saw him with the red hat before the shooting, heard the shots, and then saw Staats running away with what appeared to be a gun, and get into Ray's car without his red hat.

42. Ray does not seek to recant the portion of his trial testimony that he drove Staats to the scene and then drove him away from the scene and dropped him off at a bus stop. Ray does not seek to recant his trial testimony that Staats asked to be taken out of town and also asked for Ray's sweat jacket. Ray does not seek to recant his trial testimony that he gave Staats his sweatshirt so that Staats could change and wear something different from what he was wearing. There was sufficient and credible evidence to establish from eyewitness accounts that the guy in the red hat shot Hakim Crawford. The guy in the red hat was Dwayne Staats. Dwayne Staats killed Hakim Crawford.

43. The jury would likely have convicted Defendant whether or not they believed Ray's trial testimony. There was sufficient and credible evidence to have convicted Defendant and the jury would likely have reached the same conclusion.

44. Moreover, as a practical matter, Ray's trial testimony was so thoroughly discredited, he admitted that he lies, and both defense counsel and the State acknowledged him for what he is- a liar. He does not have any credibility with the court. Ray has admittedly lied so much, that nobody knows when or if he is telling the truth.

45. For all the above reasons, the court concludes that Defendant has failed to meet the *Larrison* standard and therefore is not entitled to a new trial on grounds of Ray's purported recantation of a portion of his trial testimony.

46. Generally, a motion based upon a recantation is ordinarily decided without a hearing.<sup>37</sup> Evidentiary hearings are generally only ordered in certain unique situations typically involving allegations of jury tampering, prosecutorial misconduct or third party confessions.<sup>38</sup> Defendant has not raised any such claim in his postconviction motion. For

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<sup>37</sup> *Blankenship v. State*, 447 A.2d at 435.

<sup>38</sup> *Blankenship*, 447 A.2d at 435.

this reason and given the inherently unreliable nature of post trial recantations, and the inherently unreliable nature of this post trial recantation, a hearing in this matter is not necessary. Having carefully considered the Defendant's motion and the evidentiary record, it does not appear that an evidentiary hearing will aid in the resolution of this motion.

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be denied.

**IT IS SO RECOMMENDED.**

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Commissioner Lynne M. Parker

oc: Prothonotary