

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 Plaintiff,)
)
 v.) Cr. ID No. 1602015338 A&B
)
 KAREEM B. BRADLEY,)
)
 Defendant.)

Submitted: May 29, 2021

Decided: June 23, 2021

**COMMISSIONER’S REPORT AND RECOMMENDATION THAT
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF
SHOULD BE DENIED
AND
RULE 61 COUNSEL’S MOTION TO WITHDRAW SHOULD BE
GRANTED.**

Cynthia F. Hurlock, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State.

Christopher S. Koyste, Esquire, Attorney for Defendant Kareem B. Bradley

PARKER, Commissioner

This 23rd day of June 2021, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

BACKGROUND AND PROCEDURAL HISTORY

1. On February 22, 2016, Defendant Kareem B. Bradley was arrested. On April 11, 2016, a Delaware grand jury returned a five-count indictment charging Bradley with Drug Dealing, Aggravated Possession, Possession of a Firearm by a Person Prohibited, Possession of Ammunition by a Person Prohibited, and Possession of Drug Paraphernalia.
2. Bradley's motion to sever the person prohibited charges from the remaining counts of the indictment was granted by the Court on November 29, 2016.
3. Bradley's jury trial on the person prohibited charges began on November 29, 2016. The jury trial lasted three days. On December 1, 2016, the jury found Bradley guilty of Possession of a Firearm by a Person Prohibited and Possession of Ammunition by a Person Prohibited.
4. On December 4, 2017, Bradley was sentenced to a total of five years of unsuspended Level V incarceration, followed by decreasing levels of probation.
5. Bradley filed a direct appeal to the Delaware Supreme Court. On direct appeal, the Delaware Supreme Court affirmed the judgment of the Superior Court.¹

¹ *Bradley v. State*, 2019 WL 446548 (Del.).

6. While Bradley's direct appeal was pending, on March 1, 2018, the State *nolle prossed* the remaining charges of the indictment.

FACTS

7. The facts as primarily set forth by the Delaware Supreme Court on Bradley's direct appeal are that in November of 2015, Detective Barnes of the Wilmington Police Department and FBI Agent Haney received information from a trusted and past-proven reliable, confidential informant that Bradley was involved in marijuana distribution in Wilmington.²

8. The informant told the officers that Bradley possessed multiple firearms, including a handgun with an extended magazine and an AK-47 style assault rifle. The informant also told the officers that Bradley lived in Southbridge and frequented a garage in the area of 13th and Locust Streets.³

9. The informant advised that s/he observed Bradley illegally purchase a gun from someone while inside the shop in the area of 13th and Locust Streets. The informant also supplied the officer with a text message from Bradley that indicated he was engaged in trafficking marijuana.⁴

² *Bradley v. State*, 2019 WL 446548, * 1 (Del.).

³ *Bradley v. State*, 2019 WL 446548, * 1 (Del.).

⁴ *Bradley v. State*, 2019 WL 446548, * 1 (Del.).

10. While meeting with the informant, the officers monitored a phone call between the informant and Bradley during which Bradley admitted to having a handgun in his possession and to keeping a rifle in a separate undisclosed location.⁵

11. Law enforcement began surveillance of Bradley in January 2016. Surveillance continued for approximately two months. During this surveillance period, the police observed Bradley meeting with subjects and engaging in what appeared to be hand-to-hand drug transactions. Law enforcement also observed that Bradley frequently visited three locations: his residence at 317 Townsend Street, his mother's residence at 2303 Thatcher Street, and a garage at 1203 Locust Street.⁶ For each location, Bradley used a key to enter and exit the property.

12. During this time period, law enforcement observed multiple individuals enter the garage at 1203 Locust Street and Bradley's residence at 317 Townsend Street, only to leave the property a few minutes later. This activity was consistent with drug dealing.⁷

13. The police searched a trash can at the curb directly in front of Bradley's residence and found numerous pieces of drug paraphernalia, including numerous

⁵ Superior Court Docket No. 82- FBI report attached to Defendant's Rule 61 submission at Appendix A15.

⁶ *Bradley v. State*, 2019 WL 446548, * 1 (Del.).

⁷ *Bradley v. State*, 2019 WL 446548, * 1 (Del.).

empty, small, torn, knotted plastic sandwich bags commonly used to package drugs for sale, and a small piece of marijuana blunt.⁸

14. In the fourth week of February 2016, the police stopped an individual after he had engaged in one of the observed hand-to-hand transactions with Bradley and found that he possessed marijuana.⁹

15. On February 22, 2016, the police secured a search warrant for Bradley's residence, a black Chrysler 300 vehicle that Bradley was observed driving, and Bradley's person (the "first warrant"). At 5:09 p.m. that same day, Bradley was stopped in his black Chrysler and arrested. He was found in possession of several individually wrapped bags of marijuana, a large sum of money, and a key ring with numerous keys.¹⁰

16. The officers then searched his residence pursuant to the first warrant and found more individually packaged bags of marijuana and another large sum of money.¹¹

17. When the officers asked Bradley about the Locust Street garage, he denied any knowledge of it.¹²

⁸ *Bradley v. State*, 2019 WL 446548, * 1 (Del.).

⁹ *Id.* * 1.

¹⁰ *Id.* * 2.

¹¹ *Id.* * 2.

¹² *Id.* * 2.

18. At around 6:30 p.m. that night, Detective Barnes and Agent Haney went to the locked garage on Locust Street and used a key from Bradley's key ring to open the garage door. Once law enforcement opened the garage door, they entered the garage, observed what was inside, and then exited and secured the garage until a search warrant was obtained.¹³ There was basically nothing in the garage other than a 1984 Monte Carlo vehicle.¹⁴

19. After the keys found on Bradley's person fit the locks to the garage, Officer Barnes again asked Bradley about the garage to which he responded that he leased the garage with a friend and the space was used to work on cars.¹⁵

20. Detective Barnes left to get a search warrant for the garage (the "garage warrant"), while Agent Haney remained with other officers to secure the location. This warrant contained the same information as the previous search warrant, however, this warrant also included Bradley's post arrest statement about leasing the garage, that Bradley had the key to the garage, as well as the informant's statement that s/he observed Bradley illegally purchase a firearm from someone inside this garage. The garage warrant was obtained at 8:30 p.m.¹⁶

¹³ *Id.* * 2.

¹⁴ *Id.* * 3.

¹⁵ *Id.* * 2.

¹⁶ *Id.* * 2.

21. The garage warrant authorized the search of a “[o]ne story brick garage building with a white front door and a mailbox to the right marked 1203,” including “[a]ny/all curtilages.”¹⁷

22. Upon returning to the garage, law enforcement used another key from Bradley’s key ring to open and search the 1984 Monte Carlo vehicle that was parked inside the garage. Inside the Monte Carlo, law enforcement located a purple lunch box that contained a loaded firearm with an extended magazine.¹⁸

**RULE 61 MOTION AND
RULE 61 COUNSEL’S MOTION TO WITHDRAW**

23. On January 30, 2020, Bradley filed a *pro se* motion for postconviction relief and a motion for appointment of counsel. On January 31, 2020, Bradley filed a *pro se* memorandum of law in support of his *pro se* Rule 61 motion. Bradley’s motion for the appointment of counsel was granted on March 13, 2020.

24. In August 2020, counsel was appointed to represent Bradley in his Rule 61 motion. Counsel took steps to acquire a complete record for the case including transcripts of all proceedings.¹⁹

¹⁷ *Id.* * 2.

¹⁸ *Id.* * 2.

¹⁹ Superior Court Docket No. 81- Rule 61 counsel’s Memorandum in Support of Motion to Withdraw, at pg. 3.

25. On April 29, 2021, assigned counsel filed a Motion to Withdraw as Postconviction Counsel pursuant to Superior Court Criminal Rule 61(e)(7). Superior Court Criminal Rule 61(e)(7) provides that:

If counsel considers the movant's claim to be so lacking in merit that counsel cannot ethically advocate it, and counsel is not aware of any other substantial ground for relief available to the movant, counsel may move to withdraw. The motion shall explain the factual and legal basis for counsel's opinion and shall give notice that the movant may file a response to the motion within 30 days of service of the motion upon the movant.

26. In the motion to withdraw, Bradley's Rule 61 counsel represented that, after undertaking a thorough analysis of Bradley's claims, counsel has determined that the claims have no merit and that counsel cannot ethically advocate for any claim for relief.²⁰ Rule 61 counsel further represented that, following a thorough review of the record, counsel was not aware of any other substantial claim for relief available to Bradley.²¹

27. On April 29, 2021, Bradley's Rule 61 counsel advised Bradley of his motion to withdraw and advised that he had the right to file a response thereto within 30 days, if Bradley desired to do so.²²

²⁰ See, Superior Court Docket Nos. 81 & 82- Defendant's Rule 61 counsel's Motion to Withdraw along with the accompanying Memorandum in Support of Motion to Withdraw and appendix.

²¹ Superior Court Docket No. 81- Rule 61 Counsel's Motion to Withdraw; and Rule 61 Counsel's Memorandum in Support of Motion to Withdraw, at pgs. 1, 19-20.

²² See, letter dated April 29, 2021 advising Bradley of the Motion to Withdraw and having 30 days to file a response thereto.

28. Bradley did not file a response to counsel’s motion to withdraw within the 30-day period or at any time thereafter.

29. In order to evaluate Bradley’s Rule 61 motion and to determine whether his Rule 61 counsel’s motion to withdraw should be granted, the court should be satisfied that Rule 61 counsel made a conscientious examination of the record and the law for claims that could arguably support Bradley’s Rule 61 motion. In addition, the court should conduct its own review of the record in order to determine whether Bradley’s Rule 61 motion is without merit.²³

30. In the subject Rule 61 motion, Bradley raises six claims alleging ineffective assistance of counsel.

31. In order to prevail on an ineffective assistance of counsel claim, Bradley must meet the two-pronged *Strickland* test by showing that: (1) counsel performed at a level “below an objective standard of reasonableness” and that, (2) the deficient performance prejudiced the defense.²⁴

32. The first prong requires the defendant to show by a preponderance of the evidence that defense counsel was not reasonably competent, while the second prong requires him to show that there is a reasonable probability that, but for defense

²³ *Matos v. State*, 2015 WL 5719694, *2 (Del.).

²⁴ *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

counsel's unprofessional errors, the outcome of the proceedings would have been different.²⁵

33. Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.²⁶ Although not insurmountable, the *Strickland* standard is highly demanding and leads to a strong presumption that counsel's conduct fell within a wide range of reasonable professional assistance.²⁷ Moreover, there is a strong presumption that defense counsel's conduct constituted sound trial strategy.²⁸

34. The decision as to whether or not to call a witness and how to examine and/or cross-examine witnesses who are called are tactical decisions.²⁹ Great weight and deference are given to tactical decisions by the trial attorney. There is a strong presumption that defense counsel's conduct constituted sound trial strategy.³⁰

35. With this backdrop in mind, we turn to Bradley's specific claims of trial counsel's ineffectiveness.

²⁵ *Id.* at 687-88, 694.

²⁶ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

²⁷ *Albury v. State*, 551 A.2d 53, 59 (Del. 1988); *Salih v. State*, 2008 WL 4762323, at *1 (Del. 2008).

²⁸ *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

²⁹ *Outten v. State*, 720 A.2d 547, 557 (Del. 1998).

³⁰ *Strickland v. Washington*, 466 U.S. 668, 689 (1984); *Harrington v. Richter*, 131 S.Ct. 770 (2011).

Claim One: Failure to Seek the Identity of Confidential Informant

36. Bradley first claims that counsel was ineffective for failing to challenge the identity of the Confidential Informant (“CI”) who provided information to law enforcement regarding Bradley’s activities.

37. Under Delaware Uniform Rule of Evidence 509, the State does not have to disclose the identity of a CI in a criminal case unless it appears that the CI may be able to give testimony that would materially aid the defense.³¹

38. The defense has the burden of establishing, beyond mere speculation, that the informant’s testimony would materially aid the defense.³²

39. Bradley does not allege, let alone meet his burden of establishing, that the informant’s testimony would have materially aided the defense.

40. In the subject action, there was no legal or factual basis to compel the State to disclose the identity of the CI. The CI in this case informed law enforcement that Bradley was selling marijuana, was in possession of firearms, that Bradley lived in the Southbridge area of Wilmington, that he frequented a garage at 13th and Locust Street, and that Bradley bought a firearm from someone while inside the garage.³³

³¹ *Kennard v. State*, 2007 WL 2523022, *3 (Del.); *Harris v. State*, 2018 WL 6431552, *2 (Del.).

³² *Kennard v. State*, 2007 WL 2523022, *3 (Del.); *Harris v. State*, 2018 WL 6431552, *2 (Del.).

³³ See, Superior Court Docket Nos. 81, at pg. 11, citing to various FBI reports attached to the Appendix at Superior Court Docket No. 82.

41. Additionally, the CI would have testified that s/he provided law enforcement with Bradley's phone number, showed law enforcement a text message that law enforcement believed was indicative of drug activity, conducted a monitored phone call with Bradley during which law enforcement heard Bradley admit to possessing a handgun, and identified Bradley from a photo shown to him/her by law enforcement.³⁴

42. There is no conceivable way any of the above-described information could be construed as being favorable and/or material to Bradley's defense as it would only further inculcate Bradley.

43. It is also important to note that law enforcement conducted its own surveillance for approximately two months, and personally and independently confirmed much of the information provided by the CI. The police personally and independently observed Bradley meeting with subjects and engaging in hand-to-hand drug transactions. The police saw the text message from Bradley that indicated he was engaged in trafficking marijuana. The police confirmed through their own surveillance that Bradley lived in Southbridge and frequented a garage in the area of 13th and Locust Streets. The police observed subjects doing into the garage and Bradley's residence and leaving within a few minutes or less- activity consistent

³⁴ See, Superior Court Docket Nos. 81, at pg. 11, citing to various FBI reports and Affidavits attached to the Appendix at Superior Court Docket No. 82.

with drug dealing. The police also monitored a phone call with Bradley and personally heard Bradley admit to possessing a handgun.

44. The CI's testimony would not have aided Bradley's defense in any respect. It would only further inculcate Bradley. When counsel does not have a legal or factual basis for raising an issue, and a motion would not have succeeded, counsel's failure to raise the issue does not constitute ineffective assistance.³⁵ Here, there was no legal or factual basis to move to compel the State to disclose the CI's identification and therefore counsel was not ineffective for not doing so.

45. Bradley failed to establish that trial counsel's conduct was deficient in failing to move to compel the identification of the CI. Moreover, Bradley also failed to establish that he suffered actual prejudice as a result thereof. The record is devoid of any evidence whatsoever that the CI would have provided exculpatory testimony. The CI only provided information to law enforcement that would have further incriminated Bradley. This claim is without merit.

Remaining Claims All Involving Search of the Garage and Recovery of the Firearm from the Vehicle Parked inside the Garage

46. Bradley's remaining claims all involve law enforcement's search of the garage at 1203 Locust Street and the recovery of the firearm from the vehicle parked inside the garage. Specifically, Bradley alleges that:

³⁵ *Pierce v. State*, 2009 WL 189150, *2 (Del.).

- Claim Two: Trial Counsel was ineffective for failing to challenge the warrantless search of the garage and vehicle inside the garage;
- Claim Three: Trial Counsel failed to investigate/interview potential witnesses that would have stated that law enforcement, prior to entering the 1203 garage, went from garage to garage attempting to use his keys to enter;
- Claim Four: Trial Counsel failed to challenge the “serious defects” in the affidavit;
- Claim Five: Trial Counsel failed to challenge the probable cause the police had for entering the garage; and
- Claim Six: Trial Counsel failed to assert there was no independent justification (exigent circumstances, inevitable discovery, independent source) to justify law enforcement’s entry into the garage without a warrant.

A) Bradley’s Claims are Procedurally Barred

47. Bradley’s remaining claims all involve contentions that law enforcement improperly searched the garage at 1203 Locust Street and the vehicle inside that garage and that, as a result thereof, the firearm found in the vehicle should be suppressed.

48. In the proceedings leading up to Bradley’s jury trial, trial counsel did not move to suppress any of the evidence recovered from Bradley’s person, his residence, or the garage. On direct appeal, Bradley challenged the admissibility of the evidence seized from the “warrantless and invalid search of the garage.”

49. On direct appeal, the Delaware Supreme Court held that Bradley’s claims of an invalid search were without merit and affirmed the judgment of the Superior Court.³⁶

50. As to Bradley’s claim of an unlawful warrantless search of the garage and vehicle inside the garage (Claim Two), and the lack of any independent justification (Claim Six), the Delaware Supreme Court concluded that there was no plain error when the police used Bradley’s keys to unlock and enter the garage without a warrant.³⁷ The Delaware Supreme Court reasoned that law enforcement had obtained information from a trusted, confidential informant, and law enforcement personally observed Bradley frequently visit the location of the Locust Street garage.³⁸

51. The Delaware Supreme Court further held that even if the police did not know the exact address of the garage, the police would have inevitably discovered its exact

³⁶ *Bradley v. State*, 2019 WL 446548 (Del.).

³⁷ *Bradley v. State*, 2019 WL 446548, *4-5 (Del.).

³⁸ *Bradley v. State*, 2019 WL 446548, *4-5 (Del.).

address through other lawful means, such as by walking up and looking at the garage mailbox, which was marked 1203, without needing to test the keys.

52. As to Bradley's claim that there were defects in the affidavit (Claim Four) and that the affidavit in support of the garage warrant lacked probable cause (Claim Five), the Delaware Supreme Court on direct appeal held that the affidavit in support of the garage did, in fact, establish the probable cause needed for the issuance of a warrant.³⁹

53. The Delaware Supreme Court concluded that the affidavit provided hard evidence that Bradley was trafficking marijuana. It also stated that a past-proven reliable informant observed Bradley illegally purchase a gun while inside the garage and that the police, on several occasions while Bradley was in the garage, observed subjects enter and exit the garage within a few minutes or less, activity consistent with drug dealing. The Delaware Supreme Court determined that the affidavit adequately connected Bradley's criminal activity to the garage.⁴⁰

54. The Delaware Supreme Court also already held that the search warrant in this case authorized the police to search the locked vehicle in the garage even though the vehicle was not specifically mentioned in the warrant. The Delaware Supreme Court ruled that, in this case, the garage warrant authorized the search of the entire garage

³⁹ *Bradley v. State*, 2019 WL 446548, * 4-5 (Del.).

⁴⁰ *Bradley v. State*, 2019 WL 446548, * 5 (Del.).

and any and all curtilages thereof for marijuana, paraphernalia, and weapons. Because such items reasonably could be found in the vehicle in the garage, the search warrant of the garage permitted a search of the vehicle inside the garage.⁴¹

55. Because the issues raised in Bradley's Rule 61 motion appear to have been adjudicated by the Delaware Supreme Court on Bradley's direct appeal, it appears that Bradley's claims are procedurally barred pursuant to Delaware Superior Court Rule of Criminal Procedure 61(i)(4), as previously adjudicated.

56. In the subject Rule 61 motion, Bradley is asserting multiple claims of ineffective assistance of counsel, each claim essentially centering around the underlying issue of whether law enforcement unlawfully searched Bradley's garage which resulted in the recovery of the firearm. The Delaware Supreme Court rejected Bradley's suppression issues, which are the underlying basis for his ineffective assistance of counsel claims. Bradley's claims raised herein appear to be procedurally barred as previously adjudicated.

B) Bradley's Claims are without Merit

57. In addition to most, if not all, of Bradley's claims being deemed procedurally barred as previously adjudicated, all of Bradley's claims raised herein are without merit.

⁴¹ *Bradley v. State*, 2019 WL 446548, * 5-6 (Del.).

58. An ineffective assistance of counsel claim based on the failure to object to evidence is without merit if trial counsel lacked a legal or factual basis to object to the evidence.⁴²

59. In the present case, trial counsel cannot be deemed ineffective for failing to challenge the search of the garage and the recovery of the firearm at issue.

60. Trial counsel cannot be deemed ineffective for failing to challenge the warrantless search of the garage and the vehicle inside the garage and for failing to allege a lack of an independent justification for the entry into the garage (Claims Two and Six), because the Delaware Supreme Court already recognized that law enforcement had obtained information from a trusted, confidential informant as to Bradley's criminal activity in that garage and law enforcement personally observed Bradley frequently visit that garage.

61. Moreover, the Delaware Supreme Court already held that the inevitable discovery doctrine was applicable to this case and therefore any potential wrongdoing by law enforcement using Bradley's keys to open and enter the garage prior to obtaining a search warrant was neutralized.

62. The Delaware Supreme Court also already held that the garage warrant permitted the search of the vehicle inside the garage.

⁴² *State v. Exum*, 2002 WL 100576, at *2 (Del.Super.), *affirmed*, 2002 WL 2017230, at *1 (Del.).

63. Bradley's claims of an unlawful warrantless search and no independent justification to justify law enforcement's entry into the garage lack merit and trial counsel cannot be deemed ineffective for failing to raise these claims.

64. Trial counsel cannot be deemed ineffective for failing to interview/investigate potential witnesses in relation to law enforcement's initial entry into the garage (Claim Three), because the inevitable discovery doctrine was applicable and neutralized any wrongdoing by law enforcement using Bradley's keys to enter the garage. Consequently, any potential testimony regarding law enforcement's use of the keys to open the garage would not have resulted in the search of the garage being found unlawful.

65. Trial counsel cannot be deemed ineffective for failing to challenge "serious defects" in the affidavit of probable cause for the garage search warrant (Claim Four), because the affidavit of probable cause did not contain any such defects. The garage search warrant clearly shows that the search warrant and the affidavit of probable cause correctly identify the address of the garage as "1203 Locust Street."⁴³

66. Bradley appears to be referring to an FBI 302 report which stated the garage address as the 1200 block of Locust. It appears that Bradley is referring to this FBI

⁴³ Superior Court Docket Nos. 82, Garage Search Warrant Affidavit and Application attached to Appendix at pgs. A34-A41.

302 report when he uses the term “the federal affidavit” and thereafter claims that the federal affidavit contained serious defects.

67. There was, in fact, no defect in the affidavit for the garage search warrant and therefore no factual basis for trial counsel to allege a defect in the affidavit and raise this claim.

68. Finally, trial counsel cannot be deemed ineffective for failing to challenge probable cause the police had for entering the garage (Claim Five), because the Delaware Supreme Court already found that there was adequate probable cause contained in the affidavit to justify the garage search warrant.

69. As the affidavit of probable cause adequately set forth facts for a judicial officer to form a reasonable belief that evidence of Bradley’s criminal activity would be found in the garage, and that the inevitable discovery doctrine would have led law enforcement to this garage, trial counsel did not have a basis to file a meritorious suppression motion. There was no factual or legal support for a successful suppression motion.

70. Thus, Bradley’s claims that trial counsel was ineffective for failing to move to suppress the evidence recovered from the garage for lack of probable cause, lack of warrant, and/or lack of an independent means to justify the search of the garage has no merit.

71. Similarly, as the inevitable discovery doctrine was applicable and neutralized any wrongdoing by law enforcement using Bradley’s keys to enter the garage, any

potential testimony regarding law enforcement's use of the keys to open the garage would not have resulted in the search of the garage being found unlawful. Thus, trial counsel was not ineffective for failing to interview potential witnesses in relation to law enforcement's initial entry into the garage.

72. Bradley has not established that his trial counsel was deficient in any respect or that he has suffered any actual prejudice therefrom.

CONCLUSION

73. After a careful review of the record, the Court concludes that Bradley's Rule 61 motion is without merit. The Court is also satisfied that Bradley's Rule 61 counsel made a conscientious effort to examine the record and the law and has properly determined that Bradley does not have a meritorious claim to be raised in his Rule 61 motion.

74. In light of the absence of any meritorious postconviction claims, Bradley's Motion for Postconviction Relief should be DENIED, and Rule 61 counsel's motion to withdraw should be GRANTED.

IT IS SO RECOMMENDED.

/s/ Lynne M. Parker

Commissioner Lynne M. Parker

cc: Prothonotary
Brett A. Hession, Esquire
Mr. Kareem B. Bradley