

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

STATE OF DELAWARE,)	
)	
)	
Plaintiff,)	
v.)	I.D.No. 0502014185
)	
PATRICK HARE,)	
)	
Defendant.)	

Submitted: July 17, 2007
Decided: August 14, 2007

OPINION

Defendant's Motion for Postconviction Relief.
Summarily Dismissed.

Appearances:

Gregory Strong, Esquire, Deputy Attorney General, Department of Justice.
Attorney for the State of Delaware.

Patrick Hare, Pro Se.

JOHN E. BABIARZ, JR., JUDGE.

In September 2005, Defendant Patrick Hare was convicted of one count of Robbery first Degree. He was sentenced to eight years at Level 5 suspended after 3 years for 2 years at Level 3. The three years of Level 5 time are mandatory. Defendant's conviction and sentence were affirmed on appeal.¹ The evidence against Defendant can be summarized as follows. Defendant entered the store at the Shell Station on Delaware Avenue in Wilmington. He waited for a female customer to make her purchase. After she paid and left the store, Defendant leapt over the counter and grabbed money from a cardboard box under the register. In so doing, he slammed into the cashier, Gurdeep Singh, who was consequently injured in the leg. Defendant fled the store, and Mr. Singh called 911. A description of the robber, based on the 911 call, was put out over the police broadcast system, and a man fitting the description was picked up 15 minutes later a few blocks from the crime scene. When the police brought him back to the store, the victim immediately identified him as the robber, a customer he saw on a regular basis. Two store surveillance cameras caught the crime on video. Although not of perfect quality, the videos show the Defendant dive across the counter and then run away. Injury to the victim was shown by photographs taken at the crime scene and by the victim's testimony.

Hare now seeks postconviction relief on three grounds of ineffective assistance of counsel – favorable evidence not obtained by defense counsel, tainted surveillance tape, and mistaken identity. To prevail on a claim of ineffective assistance of counsel, Defendant must

¹*Hare v. State*, Del. Supr., No. 50, 2006, Jacobs, J. (Sept. 18, 2006).

meet the *Strickland* test.² He must show that counsel's representation fell below a reasonable professional standard and that but for counsel's errors the result of the proceedings would have been different.³

Defendant argues first that his attorney failed to obtain a transcript of the 911 call placed by Mr. Chathra, which could have shown that the police lied about the coat and that his coat did not match the one in the video.⁴ It must be said first that there is nothing in the record to suggest that the police lied about the coat, nor that they had a reason to lie. Second, the police broadcast described the robber as a "heavy set white man wearing a tan coat," a general description based on the 911 call which fit the Defendant. The video shows two views of Defendant committing the robbery in a somewhat dark coat. The store manager testified that the video cameras often misrepresented colors. One example was bright red counter top, shown to jurors, which appears a different color on the video than it is in reality. The questions pertaining to the color of the coat were extensively explored by both parties at trial, and the 911 call would not have changed the result. This argument has no merit.

Defendant contends that counsel should have hired an electronics expert to show that important parts of the video were blacked out, thereby proving that the crime was a theft not

²*Strickland v. Washington*, 466 U.S. 668 (1986).

³*Id.* at 688, 694.

⁴On direct appeal, Defendant objected to the fact that the 911 tape had not been admitted into evidence at trial, asserting that the tape would have provided a basis to challenge the victim's description of the perpetrator. The Court addressed Defendant's primary contention and found that the State was under no obligation to use the tape at trial.

a robbery. The surveillance video shows the robbery occurring from the perspective of two cameras. Although neither camera has a view from behind the counter, each view shows the crime from start to finish, and nothing has been blacked out. The store manager testified that he arrived at the scene ten minutes after it occurred and that he showed the two videos to the police at the time. He is the only person who has access to the video system. This claim does not meet the *Strickland* test and has no merit.

Finally, Defendant alleges that defense counsel could have obtained a conviction for theft if he had investigated the store premises, and hired an expert to examine the video and the transcript of 911 call. The police took numerous photographs of the store just after the crime took place, and these photos were admitted into evidence at trial. Defendant does not explain what could be gained from defense counsel conducting a separate investigation. Defendant's allegations regarding the 911 call and the video are vague and conclusory and subject to summary dismissal. This final argument fails to meet the *Strickland* test.

Defendant's motion for postconviction relief is ***Summarily Dismissed***.

It Is So ORDERED.

Judge John E. Babiarz, Jr.

Original to Prothonotary
JEBjr/ram/bjw