

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HAYWARD M. EVANS,	§
	§
Defendant Below-	§ No. 89, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0111010136
Plaintiff Below-	§
Appellee.	§

Submitted: March 14, 2008
Decided: June 9, 2008

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 9th day of June 2008, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Hayward Evans, filed this appeal from the Superior Court's denial of his motion for a new trial. After careful consideration of the parties' respective positions on appeal, we conclude that the judgment of the Superior Court must be affirmed.

(2) The record reflects that a Superior Court jury convicted Evans in March 2003 of first degree murder, two counts of attempted murder, and three counts of possession of a deadly weapon during the commission of a felony. This Court affirmed

his convictions on direct appeal.¹ In December 2006, Evans filed a motion for a new trial,² which the Superior Court denied. This appeal followed.

(3) In his opening brief on appeal, Evans argues that the Superior Court erred in denying his motion for a new trial based on newly-discovered evidence of juror misconduct. Under Superior Court Criminal Rule 33, a motion for a new trial based on newly discovered evidence must be filed “within two years after final judgment.”³ Evans’ convictions became final in August 2004, upon the issuance of this Court’s mandate following his direct appeal.⁴ Therefore, Evans’ motion for a new trial, filed in December 2006, was untimely and could have been denied on that basis.

(4) Moreover, it is clear that Evans’ motion had no merit. The claimed “newly discovered evidence,” in fact, had been the subject of several on-the-record inquiries made by the judge at Evans’ 2003 trial and, thus, was not newly discovered. Accordingly, we find no error in the Superior Court’s denial of Evans’ motion for a new trial based on newly discovered evidence.⁵

¹ *Evans v. State*, 2004 WL 1790191 (Del. Aug. 3, 2004).

² *See* Del. Super. Ct. Crim. R. 33 (2008).

³ *Id.*

⁴ *Maxion v. State*, 686 A.2d 148, 151 (Del. 1996).

⁵ Even if Evans’ motion had been deemed as one for postconviction relief under Superior Court Criminal Rule 61, the juror misconduct issue was raised at trial and not advanced on direct appeal. Since cause for failure to raise that issue has not been demonstrated, Evans’ motion would be barred by Superior Court Criminal Rule 61(i)(3).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court
is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice