

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT W. HASSETT, III,	§	
	§	
Defendant Below-	§	No. 468, 2003
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for Sussex County
STATE OF DELAWARE,	§	Cr. A. Nos. 00-06-0148 and 0149
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: April 1, 2005
Decided: June 24, 2005

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

ORDER

This 24th day of June 2005, upon consideration of the briefs on appeal, the parties' supplemental memoranda and the record below, it appears to the Court that:

(1) The defendant-appellant, Robert W. Hassett, III, filed an appeal from the Superior Court's August 25, 2003 order denying his motion for a new trial pursuant to Superior Court Criminal Rule 33 and his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.¹

¹ On May 20, 2004, we remanded this matter to the Superior Court for further proceedings in connection with Hassett's postconviction claim that his trial counsel provided

(2) Hassett was found guilty by a Superior Court jury of Murder in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony. Hassett was sentenced on the first conviction to life imprisonment and on the second conviction to 20 years imprisonment at Level V. Hassett's convictions and sentences were affirmed by this Court on direct appeal.²

(3) The evidence at trial established that, in May 2000, Hassett lived in an apartment adjoining his father's mobile home near Seaford, Delaware. There was friction between Hassett and his father because of Hassett's loud music and partying. One evening, bothered by the noise from the apartment, Hassett's father told him he would have to move out. Hassett's friend, Jason Coggin, was with Hassett in the apartment at the time. According to Coggin, Hassett became angry with his father and stabbed the wall between the apartment and the mobile home with a steak knife. Later, Hassett, who had been drinking heavily and smoking marijuana, met his stepmother outside the apartment. Shortly thereafter, there were screams. Hassett returned to the apartment and told Coggin that he had killed his stepmother. The two of them carried her body into the apartment. Hassett then

ineffective assistance. The Superior Court scheduled an evidentiary hearing and, on October 19, 2004, filed its report following remand. Based on the evidence presented at the hearing, the Superior Court found no merit to Hassett's ineffective assistance of counsel claim. The parties then filed supplemental memoranda in this Court, which addressed the Superior Court's findings on remand.

² *Hassett v. State*, Del. Supr., No. 420, 2001, Steele, J. (May 15, 2002).

went into the mobile home to get some money. After threatening his father with a knife, Hassett drove away in his stepmother's car. Hassett's father called 911 and told the officer dispatched to the scene what had happened. Hassett testified at trial that it was Coggin who had killed his stepmother, but the jury did not find his story to be credible.

(4) In this appeal, Hassett claims that the Superior Court abused its discretion by denying his motions for a new trial and for postconviction relief. In his motion for a new trial, Hassett alleged that the Superior Court should have scheduled an evidentiary hearing regarding a post-trial affidavit submitted by Coggin, which stated that he had lied on the witness stand due to coercion from the prosecutor. In his postconviction motion, Hassett alleged that the prosecutor's closing argument was improper, the trial court made erroneous evidentiary rulings, the police engaged in misconduct and his trial counsel provided ineffective assistance.³

(5) The standard for determining whether a new trial should be granted based on recanted testimony is whether: 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 conclusion; and c) the party seeking the new

³ Hassett reasserts this argument in his supplemental memorandum filed in this Court in response to the Superior Court's findings on remand.

trial was surprised when the testimony was given or did not know it was false until after the trial.⁴ Such a motion is generally decided without an evidentiary hearing unless there are exceptional circumstances such as factually specific allegations of jury tampering, third-party confessions or prosecutorial misconduct.⁵

(6) While Coggin's affidavit states that the prosecutor coerced him into lying on the witness stand, it is not specific as to either the nature of the coercion or the nature of his alleged lies on the witness stand. It merely states that the prosecutor told him what to say and coerced him with the threat of prison and that "everything" he said at trial about the murder was a lie. Under these circumstances, the Superior Court was within its discretion to summarily reject the affidavit as unreliable and to deny Hassett's motion for a new trial.

(7) Hassett next claims that the Superior Court abused its discretion by determining that the claims made in his motion for postconviction relief were procedurally barred⁶ and by denying the motion on that basis. In support of this claim, he contends, first, that it was improper for the prosecutor to insinuate in

⁴ *Blankenship v. State*, 447 A.2d 428, 433-34 (Del. 1982).

⁵ *Id.* at 435.

⁶ Super. Ct. Crim. R. 61(i) (3); Super. Ct. Crim. R. 61(i) (4); Super. Ct. Crim. R. 61(i) (5).

closing argument that he lied and to imply that the State had superior knowledge of the facts.⁷

(8) The prosecutor is entitled to argue all legitimate inferences of guilt that flow from the evidence presented at trial.⁸ We have reviewed the closing argument of the prosecution in this case and find nothing in it that contravenes this general principle or that constitutes improper “vouching.”⁹ Hassett has failed to show that a miscarriage of justice occurred at trial. We, therefore, find no abuse of discretion on the part of the Superior Court in finding this claim to be procedurally barred or in denying Hassett’s motion for postconviction relief on this ground.

(9) Hassett next contends that the Superior Court should have granted his motion for postconviction relief based on the trial judge’s erroneous rulings. In particular, he alleges that the trial judge erred by failing to dismiss a juror who was contacted by the victim’s family during trial, by denying his request for the appointment of co-counsel, and by denying his request to dismiss his counsel.¹⁰

(10) We have reviewed the record in this case and find no error on the part of the trial judge in not dismissing one of the jurors. The record reflects that a trial

⁷ Hassett made this claim for the first time in his postconviction motion. Super. Ct. Crim. R. 61(i) (3).

⁸ *Hughes v. State*, 437 A.2d 559, 567 (Del. 1981).

⁹ *Saunders v. State*, 602 A.2d 623, 624 (Del. 1984).

¹⁰ Hassett made this claim for the first time in his postconviction motion. Super. Ct. Crim. R. 61(i) (3).

spectator reported to the judge that one of the jurors had been contacted by the victim's family. The judge questioned the juror and found no evidence of any contact with the victim's family. The issue was never raised again. We, likewise, find no error or abuse of discretion on the part of the trial judge in denying Hassett's requests for the appointment of co-counsel and new counsel. There is no evidence in the record suggesting that Hassett's counsel needed the assistance of co-counsel. There is likewise no factual support for Hassett's claim that the trial judge should have appointed new counsel for him. The record reflects that, prior to trial, Hassett voiced a concern that his counsel was not communicating with him. The record further reflects, however, that, once the trial judge forwarded the concern to counsel, there was no further mention of it. Hassett has failed to show that a miscarriage of justice occurred at trial. We, therefore, find no abuse of discretion on the part of the Superior Court in finding these claims to be procedurally barred or in denying Hassett's motion for postconviction relief on these grounds.

(11) Hassett also contends that the Superior Court should have granted his motion for postconviction relief because the trial judge failed to properly instruct the jury concerning "vouching" by the prosecutor during closing argument.¹¹ The

¹¹ This claim was raised in Hassett's direct appeal and was decided against him. Super. Ct. Crim. R. 61(i) (4).

record reflects that the judge advised the jury that “vouching” by counsel was improper and cautioned them to disregard any personal opinion or belief offered by counsel during opening or closing statements or at any other time during trial. We find no impropriety in this instruction. Hassett has failed to show that a miscarriage of justice occurred at trial. We, therefore, find no abuse of discretion on the part of the Superior Court in finding this claim to be procedurally barred or in denying Hassett’s motion for postconviction relief on this ground.

(12) Hassett next contends that the Superior Court should have granted his motion for postconviction relief because the police engaged in misconduct.¹² The record reflects that the police acknowledged that they did not seize certain items of Coggin’s clothing during their investigation of the murder and that they did not take hair samples, fingerprints or fingernail scrapings from Coggin. This, in and of itself, does not constitute misconduct. Moreover, given that the victim’s blood was found on Hassett’s shirt and that her DNA was found in Hassett’s fingernail scrapings, Hassett has failed to show that a miscarriage of justice occurred at trial. We, therefore, find no abuse of discretion on the part of the

¹² Hassett made this claim for the first time in his postconviction motion. Super. Ct. Crim. R. 61(i) (3).

Superior Court in finding this claim to be procedurally barred or in denying Hassett's motion for postconviction relief on this ground.

(13) Hassett's final contention is that the Superior Court should have granted his motion for postconviction relief on the basis that his counsel provided ineffective assistance. Hassett alleges that his counsel failed to investigate his mental health status, investigate the backgrounds of the prosecution witnesses, obtain the opinion of an expert on the effects of drugs and alcohol on his behavior at the time of the murder, call appropriate witnesses and meet with him in order to fully discuss the case.

(14) Following remand of this matter to the Superior Court for further proceedings on Hassett's claim of ineffective assistance of counsel, the Superior Court scheduled an evidentiary hearing. At the hearing, the Superior Court heard testimony from Hassett's trial counsel and Dr. Allen Weiss, the prison psychiatrist who treated Hassett during the period prior to his trial. The State also placed Hassett's prison medical record into evidence. On the basis of the evidence presented, the Superior Court found that Hassett was competent to stand trial and remained competent throughout the trial, that Hassett's attorney had no obligation to order a mental health evaluation for Hassett because there was no indication at any time that Hassett was not competent, and that Hassett's attorney appropriately

did not pursue the defenses of extreme emotional distress, diminished mental capacity or temporary insanity because to do so would have required Hassett to admit to the crime, which he refused to do. The Superior Court also found no factual support for Hassett's claims that his attorney failed to investigate and interview possible defense witnesses.

(15) In order to prevail on his claim of ineffective assistance of counsel, Hassett must show that counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.¹³ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."¹⁴

(16) The record reflects that Hassett's defense at trial was that Coggin, and not he, had murdered his stepmother. The state of Hassett's mental health and the effect of the drugs and alcohol he had ingested were simply not relevant to that defense. There was no error on the part of Hassett's counsel in that respect. As for Hassett's other contentions, we agree with the Superior Court that there is no

¹³ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

¹⁴ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

evidence that any alleged error on the part of his counsel resulted in prejudice to him.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.¹⁵

BY THE COURT:

/s/Henry duPont Ridgely
Justice

¹⁵ On February 22, 2005, Hassett filed a motion for an evidentiary hearing in this Court. The grounds for the motion were that the Superior Court's report following remand did not accurately reflect the testimony at the hearing. The hearing testimony has since been transcribed and this Court has reviewed the transcript in detail. We conclude that there is no reason for an evidentiary hearing in this Court and Hassett's motion is, therefore, hereby denied.