

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

P.O. BOX 746  
COURTHOUSE  
GEORGETOWN, DE 19947

August 25, 2003

Robert W. Hassett, III  
Sussex Correctional Institution  
P.O. Box 500  
Georgetown, DE 19947-0500

RE: State v. Hassett, Def. ID# 0005011315

DATE SUBMITTED: May 14, 2003

Dear Mr. Hassett:

Pending before the Court is the motion of Robert W. Hassett, III ("defendant") for postconviction relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). Defendant also makes a motion for a new trial based on allegedly "recanted" testimony. Although he makes this latter motion within the Rule 61 motion, the Court treats it as though it is made pursuant to Superior Court Criminal Rule 33 ("Rule 33"). This constitutes my decision on the pending motions.

PROCEDURAL HISTORY AND FACTS

Defendant was arrested for, and tried on, the charges of murder in the first degree and possession of a deadly weapon during the commission of a felony. The jury found he intentionally caused the death of his step-mother Sherri L. Hassett on May 14, 2000, by stabbing her with a knife, and it found him guilty as charged.

Sherri Hassett lived with defendant's father and her children in a double-wide mobile home in Sussex County, Delaware. At one end of the home was an apartment which was partitioned off from the rest of the home; this is where defendant lived.

Before May 13, 2000, defendant's behavior was causing conflicts between him and his father and step-mother. Defendant and his friend Jason Coggin ("Coggin") had been drinking and using drugs most of the day and evening of May 13, 2000. Late in the evening of May 13, 2000, defendant's father told defendant he had to move out of the apartment. Soon thereafter, defendant confronted Sherri Hassett outside the residence and stabbed her to death. Defendant came back into his residence, told Coggin what he had done, and had Coggin help him move Sherri Hassett's body from outside to inside his apartment. Defendant and Coggin then went into defendant's father's portion of the residence, awoke him, and told him about the murder. Coggin took off running, eventually making his way to his own home. Defendant took Sherri Hassett's car and fled to his natural mother's house in Kent County, where the police located him.

At trial, Coggin testified he was inside defendant's apartment when the murder occurred and helped bring Sherri Hassett's body from outside to inside. Defendant, on the other hand, testified that Coggin was the one who killed Sherri Hassett; that he had no idea Coggin would do that; that he did not participate in the murder at all; and that he was so shocked when the killing took place, he could not do anything.

The jury rejected defendant's version of events and convicted him as charged. The Court sentenced defendant, on August 10, 2001, to Level 5 for the balance of his natural life on the murder in the first degree conviction and to twenty (20) years at Level 5 on the

possession of a deadly weapon during the commission of a felony conviction.

On appeal, defendant raised one issue. He argued that the trial court abused its discretion in only granting a cautionary instruction regarding the prosecutor's implication in his rebuttal closing argument that defendant's testimony was tailored to fit the evidence he had seen and heard throughout his trial. The Delaware Supreme Court affirmed the judgment of the Superior Court, holding that defendant's appeal issue failed in light of the United States Supreme Court decision in Portuondo v. Agard, 529 U.S. 61 (2000). Hassett v. State, Del. Supr., No. 420, 2001, Steele, J. (May 15, 2002).

On May 2, 2003, defendant filed the pending motions. I discuss them separately below.

## DISCUSSION

### 1) Motion for New Trial

Defendant argues that the prosecutor forced Jason Coggin to lie, as Coggin explains in an affidavit, and the Court should grant a new trial based on prosecutorial misconduct. Defendant actually is seeking a new trial based on newly discovered evidence - the alleged recantation of Coggin. The appropriate vehicle for considering this motion is Rule 33<sup>1</sup>. Cf. Weedon v. State, 750 A.2d 521 (Del. 2000) (where the new trial motion was time-barred under Rule 33, the facts of the case allowed for the Court to review a recantation under the

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<sup>1</sup>In Super. Ct. Crim. R. 33, it is provided:

The court on motion of a defendant may grant a new trial to that defendant if required in the interest of justice. \*\*\* A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment....

interest of justice exception in Rule 61(i)(4)).

Defendant submits the following copy of an affidavit from Coggin dated August 23, 2002:

I, Jason Coggin, hereby swear that the statement I am giving is the truth. I was not coerced, bribed, or threatened to give this statement.

The statement that I gave as a witness for the prosecution in Robert W. Hassett 3rd's trial was not the truth. Not only was it not the truth, but I was coerced by Jim Adkins, the prosecutor. Jim Adkins told me what to say and what I was not to say. He also gave me information to say at trial. Mr. Adkins also threatened me by saying that if I did not testify to the effects of what he and the police told me to say, then I would go to prison. So, due to my fear of going to prison, I lied on the witness stand and prior to the trial.

Therefore, I believe that Robert W. Hassett 3rd was not given a fair trial. Because I lied on the witness stand, and I was not the only one threatened to give a false testimony on the witness stand. [sic] Everything that I testified to regarding May 14, 2000 and the events that took place were lies, given to me by the police and Jim Adkins.

I, Jason Coggin, have given this statement by my own free will, with the understanding of the perjury law. I swear this statement is the truth.

Coggin does not recant anything. He does not specify how he lied. He merely says he lied. In order for this Court to consider undertaking an analysis as set forth in Blankenship v. State, 447 A.2d 428 (Del. 1982) and to hold a hearing as did the Court in Weedon v. State, Del. Super., Def. ID# 93S00177DI, Graves, J. (March 6, 2001), Coggin must submit a document that specifies every false statement he made, the "true" version of events, and what the prosecutor threatened. It flies in the face of judicial economy and common sense for this Court to hold a hearing and perform an analysis based on Coggin's nebulous statements set forth above.

The motion for new trial is denied.

## 2) Motion for Postconviction Relief<sup>2</sup>

I now turn to defendant's Rule 61 motion and individually address each ground defendant advances.

### a) Prosecutorial Misconduct

Defendant's first ground for relief is prosecutorial misconduct. He alleges that the following statements in the prosecutor's closing arguments constituted prosecutorial misconduct:

But he was in shock, ladies and gentlemen. But it wasn't the kind of shock where he would forget to get Sherri Hassett's car keys off of her body so he could get to his mom's house. It wasn't the kind of shock that he couldn't take Sherri's car and drive it up to Harrington.

It wasn't the kind of shock that would make him want to go to a neighbor and report what his friend had done. It wasn't the kind of shock that made him stop by a police station and just let them know. It wasn't the kind of shock that made him forget to drive back roadways because he didn't have a driver's license.

It wasn't the kind of shock that prevented him from thinking to hide the car in the bushes at the hog farm in Harrington out of sight of the road and miles from his mother's house that he was in a hurry to get to.

It wasn't the kind of shock that made him forget to change his bloody clothes and leave them in his mom's house, only to tell police later that he threw them away in some kind of trash container near where the car was back on the hog farm. It wasn't the kind of shock that, as the police were taking fingernail scrapings, he told them, "You are not going to get anything off of me. I never touched her." It wasn't that kind of shock, ladies and gentlemen.

No objection to this statement was made at trial and it was not raised as an issue on

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<sup>2</sup>The Rule 61 motion is timely filed pursuant to Super. Ct. Crim. R. 61(i)(1), which provides:

A motion for postconviction relief may not be filed more than three years after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than three years after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.

appeal.

This ground for relief is procedurally barred because it was not asserted in the proceedings leading to the judgment of conviction and defendant has not attempted to show cause for relief from the procedural default and prejudice from violation of defendant's rights. Super. Ct. Crim. R. 61(i)(3).<sup>3</sup> As an aside, I note defendant cannot establish prejudice; the prosecutor's statements are not subject to any legal attack. Furthermore, defendant cannot otherwise overcome the procedural bar because he has failed to (and cannot) show there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction. Super. Ct. Crim. R. 61(i)(5).<sup>4</sup>

This ground fails.

#### b) Trial Court Error

Defendant asserts that the trial court erred in a number of respects.

##### 1) Jury Issue

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<sup>3</sup>In Super. Ct. Crim. R. 61(i)(3), it is provided:

Procedural default. Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows

- (A) Cause for relief from the procedural default and
- (B) Prejudice from violation of the movant's rights.

<sup>4</sup>In Super. Ct. Crim. R. 61(i)(5), it is provided:

Bars inapplicable. The bars to relief in paragraphs (1), (2), and (3) of this subdivision shall not apply to a claim that the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.

First, defendant argues the trial court erred in finding no prejudice occurred when the jury members discussed the case outside of the jury room without confronting the witness who allegedly overheard the matter.

Defendant's argument is not based on a correct recitation of the facts. In actuality, the following occurred regarding Juror No. 2. A court spectator reported to trial counsel that a member of Sherri Hassett's family possibly may have had an encounter with Juror No. 2. The court spectator left the courthouse. The Court questioned Juror No. 2 in Chambers regarding any possible encounter. Juror No. 2 told the Court that no one had had contact with her about the case. The Court was satisfied with her answer. Since the spectator who made the report was not available, the Court instructed trial counsel that if he contacted the spectator who reported the possible contact and learned that the spectator had a different version from that of Juror No. 2, then the Court would question that court spectator. Trial counsel said he would follow up with the court spectator and clarify what it was that the court spectator saw, noting that the spectator could have been mistaken. Nothing more was placed on the record regarding the issue.

No objection to the Court's findings was made nor were the Court's rulings regarding Juror No. 2 raised as issues on appeal. This ground for relief is procedurally barred because it was not asserted in the proceedings leading to the judgment of conviction and defendant has not attempted to show cause for relief from the procedural default and prejudice from violation of defendant's rights. Super. Ct. Crim. R. 61(i)(3). Furthermore, defendant cannot otherwise overcome the procedural bar because he has failed to show there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality,

reliability, integrity or fairness of the proceedings leading to the judgment of conviction.

Super. Ct. Crim. R. 61(i)(5).

This ground fails.

## 2) Change in Counsel Requests

Defendant's second argument is that the trial court erred in denying defendant's motions seeking appointment of another trial attorney.

Defendant did not raise this issue on appeal. This ground for relief is procedurally barred because it was not asserted in the proceedings leading to the judgment of conviction and defendant has not attempted to show cause for relief from the procedural default and prejudice from violation of defendant's rights. Super. Ct. Crim. R. 61(i)(3). Furthermore, defendant cannot otherwise overcome the procedural bar because he has failed to show there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction. Super. Ct. Crim. R. 61(i)(5).

This ground fails.

## 3) Denial of Co-counsel

Defendant's third argument is that the trial court abused its discretion in denying his request for co-counsel given the nature and complexity of the case. Defendant did not raise this issue on appeal. This ground for relief is procedurally barred because it was not asserted in the proceedings leading to the judgment of conviction and defendant has not attempted to show cause for relief from the procedural default and prejudice from violation of defendant's rights. Super. Ct. Crim. R. 61(i)(3). Furthermore, defendant cannot otherwise overcome the



procedural bar because he has failed to show there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction. Super. Ct. Crim. R. 61(i)(5).

Even if defendant overcame the procedural bars, the claim would fail. As explained in Riley v. State, 496 A.2d 997, 1016 (Del. 1985), cert. den., 478 U.S. 1022 (1986):

Of the courts that have addressed the issue, there is near unanimity that the appointment of additional counsel ... for an indigent criminal defendant is not a constitutionally protected right under federal or state law - absent a showing that such services are essential for an adequate defense.<sup>5</sup>

See State v. Zebroski, Del. Super., Def. ID# 9604017809, Silverman, J. (Aug. 31, 2001), aff'd, 822 A.2d 1038 (Del. 2003) (concluding there was no ineffective assistance of counsel where there was only one trial counsel in a capital murder case). Trial counsel in this case was an experienced, seasoned criminal defense attorney. The defense, that Coggin and not defendant killed Sherri Hassett, was simple. Since defendant cannot show prejudice, this claim fails on its merits.

This ground fails.

#### 4) Ruling on Prosecutor's Statements

Fourth, defendant argues the trial court abused its discretion in only granting a cautionary instruction regarding the prosecutor's implication in rebuttal that defendant

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<sup>5</sup>In Riley v. Taylor, 277 F.3d 261 (3rd Cir. 2001), the Third Circuit Court of Appeals directed the Delaware District Court to grant defendant Riley a writ of habeas corpus on grounds other than the argument Riley was entitled to the appointment of co-counsel. In fact, the Court held there was no constitutional violation in not appointing co-counsel. Id. at 306-07.

tailored his testimony.

Defendant raised this issue on appeal and it was decided against him. Hassett v. State, Del. Supr., No. 420, 2001, Steele, J. (May 15, 2002). Since it has been formerly adjudicated, this ground is procedurally barred unless reconsideration of the claim is warranted in the interest of justice. Super. Ct. Crim. R. 61(i)(4).<sup>6</sup> Defendant has not asserted any "interest of justice" ground nor does this Court discern one which would cause this Court to consider this argument in light of the procedural bar.

This ground fails.

#### c) Police Misconduct

Defendant asserts that the police committed misconduct in their investigation by acting under "the bad faith clause" and dismissing other evidence.

He specifies as follows.

The police never conducted a proper investigation. There was more than one suspect. But, the police failed to investigate or perform and research to be sure that leads were reliable. The police received statements that contradicted one another. And instead of going by procedure. [sic] By taking all suspects' fingerprints and the clothing that the suspects were wearing at the time of the interview. [sic] Police failed to obtain and test all of the evidence. \*\*\*

The police went by a statement that has now been recanted. (See: affidavit, Jason Coggin as: ex-A-1) The officers in charge of the evidence never took any Valuable evidence off of the other suspect. Such as fingerprints, fingernail, scrapings, hair samples etc.... In their tasks of collecting evidence the police

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<sup>6</sup>In Super. Ct. Crim. R. 61(i)(4), it is provided:

Former adjudication. Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice.

failed to secure any of this evidence to support and find the truth of fact. \*\*\*

During the investigation, the police had a statement from the defendant that other suspect had committed the crime. ... and the police still did not look into this information.

Defendant did not raise such complaints against the police officers in the proceedings leading to judgment and he has not shown why these complaints should not be procedurally barred pursuant to Rule 61(i)(3). Slater v. State, Del. Supr., No. 164, 1994, Berger, J. (March 1, 1995). Furthermore, he has failed to set forth any reasons why exceptions to the procedural bars exist.

This claim fails because it is procedurally barred.

#### d) Ineffective Assistance of Counsel

Defendant asserts that trial counsel was ineffective in a number of respects. Since this is the first time that defendant has had the opportunity to raise these arguments, they are not procedurally barred.

Where a defendant makes a claim of ineffective assistance of counsel, he must show that counsel's errors were so grievous as to fall below an objective standard of reasonableness and he must show to a reasonable degree of probability that but for counsel's unprofessional errors, actual prejudice resulted. Strickland v. Washington, 466 U.S. 668 (1984). In addition, the allegations must be concrete; vague and conclusory allegations fail. Younger v. State, 580 A.2d 552, 555 (Del. 1990).

#### 1) Mental health issues and drug issues

Defendant argues that trial counsel failed to investigate or pursue defendant's mental health issues and that if he had, defendant might have been found not guilty or guilty of a

lesser charge based on defenses of extreme emotional distress, diminished mental capacity or temporary insanity. He also argues that trial counsel failed to obtain the opinion of any drug expert prior to trial regarding the effects of various drugs and how those effects affected the defendant's psychological capacity.

These areas only would be relevant if defendant had sought to reduce or excuse his culpability in Sherri Hassett's death. In order to invoke these defenses, defendant's trial testimony would have to have been completely different from what it was; he would have to have admitted that he had culpability in Sherri Hassett's death. Ross v. State, 768 A.2d 471 (Del. 2001) (raising an affirmative defense constitutes an admission of culpability in the death). These defenses were not available to defendant in light of his trial testimony. Thus, defendant cannot show, based on his trial strategy and his testimony, that the outcome of his case would have been different had his trial attorney performed an investigation regarding his mental state and/or psychological capacity.

## 2) Investigation of witnesses

Defendant asserts that trial counsel failed to investigate or properly prepare for cross-examination in order to be able to properly impeach witnesses. Defendant never specifies what it is that trial counsel would have learned in such an investigation and how that would have changed the outcome of the trial. Instead, what he does is submit citations to transcript pages, questionnaires from several people, an unverified, unsworn statement from his mother, and an unverified, unsworn report from his mother's psychiatrist<sup>7</sup> in support of vague

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<sup>7</sup>Defendant submitted this report from Mark S. Borer, M.D., his mother's psychiatrist. His mother thereafter requested that the Court seal this document. The document contains inadmissible hearsay and the information in it does not in any way advance

statements that no investigation was done. Defendant leaves it to the Court to figure out what he is arguing. Establishing ineffective assistance of counsel is not the Court's responsibility; that responsibility lies with defendant. Without specifying how trial counsel's investigation was not reasonable and how the outcome of the trial would have been different had trial counsel conducted an otherwise reasonable investigation, the vague assertions fail. Younger v. State, 580 A.2d at 555.

This claim fails.

3) Failure to interview witness

Defendant argues that trial counsel failed to secure and interview the person who reported possible contact between Juror No. 2 and a member of Sherri Hassett's family. Defendant has not submitted any information establishing that this court spectator actually saw contact. As a consequence, defendant cannot show that the outcome of the trial would have been anything other than what it was. He does not meet the Strickland standards, and this claim fails.

4) Meetings with defendant

Defendant argues that trial counsel only met with him three times and did not fully discuss the facts of the case with him. He argues that had there been more meetings, a better defense other than the one that he was not guilty would have been pursued. This ground fails for vagueness because defendant does not specify what other defense he would have pursued. Younger v. State, supra.

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defendant's request for postconviction relief. Accordingly, the Court orders that this report by Dr. Borer be sealed and not be opened absent leave from this Court.

As an aside, I speculate that based upon defendant's previous arguments, defendant is implying that he would have pursued a diminished capacity defense had he had more time with his attorney. That means that defendant would have to have admitted he participated in causing the death of Sherri Hassett. See Ross v. State, 768 A.2d. That position does not in any way mesh with the defense he presented at trial. Defendant made a decision about what story he was going to tell. His trial counsel competently represented him in connection that defense.

This ground fails.

#### CONCLUSION

For the foregoing reasons, the Court denies defendant's Rule 61 motion.

**IT IS SO ORDERED.**

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office  
James W. Adkins, Esquire  
Martin J. Cosgrove, Esquire  
Thomas D.H. Barnett, Esquire