

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
v.)	ID No.: 0210013335A
)	
BRYAN L. DAWKINS,)	
)	
Defendant.)	

Submitted: February 11, 2008
Decided: March 19, 2008

ORDER
Defendant's First Motion for Postconviction Relief – *Upon Remand*

1. This follows the Supreme Court's, November 27, 2008, remand calling for trial counsel's affidavit.
2. After his conviction for first degree murder, and related charges, was affirmed on September 15, 2005,¹ Defendant filed a timely motion for postconviction relief under Superior Court Criminal Rule 61.
3. The case was properly referred by the Prothonotary.² And, on March

¹ *Dawkins v. State*, Del. Supr., No. 299, 2004, Jacobs, J. (Sept. 15, 2005) (ORDER).

² Super. Ct. Cr. R. 61(d)(1); *Compare Webb v. State*, 888 A.2d 233, 2005 WL 3200400 (Del. Nov. 28, 2005) (TABLE).

28, 2007, the court issued a detailed order, finding some claims procedurally barred and rejecting Defendant's ineffective assistance of counsel claim.³ The order explained the court's rationale.

4. As the court explained, it presided over the trial and this was an open-and-shut murder case. Identity was not an issue, as Defendant killed his estranged wife in front of rush-hour traffic on one of the busiest highways in Delaware. While Defendant's intent was contested, Defendant had a motive; he was violating a protection from abuse order; and he repeatedly stabbed the victim with a deadly weapon that he brought to the scene.

5. Defendant tried to establish extreme emotional distress⁴ and, at his counsel's insistence, the court charged the jury on it. In order to justify giving the charge, the court stretched the record to its limit. The incident that ended in the murder was simply the victim's attempt to take her child home from daycare. In the moments leading up to Defendant's fatal attack, the victim was trying to reason with him. At the moment Defendant started stabbing her, the only thing the victim was doing was running from him. Thus, it could hardly be said that there was a reasonable, causal relationship between any earlier provocation by the victim and her

³ Super. Ct. Cr. R. 61(i)(3) and (4); *State v. Dawkins*, 2007 WL 959519 (Del. Super.).

⁴ 11 *Del. C.* § 641.

murder.

6. In short, despite Defendant's attempt to portray the victim as unfaithful or otherwise provocative, the defense had little to refute the evidence proving that this was the tragic end to a classic pattern of domestic violence. As a matter of law, Defendant's evidence scarcely supported the extreme emotional distress instruction. It did not come close, as a matter of fact, to making a viable defense.

7. The motion for postconviction relief included a list of ways trial counsel was allegedly ineffective. In its order dismissing the motion, the court concluded that even if Defendant's claims were true, it would not have changed the outcome. Generally, the court concluded that Defendant's trial counsel obtained the best verdict Defendant could have reasonably hoped for.

8. Defendant filed an appeal, which precipitated this remand. In its order, the Supreme Court called for Defendant's trial counsel to respond to the motion. The order then required the court to review the response and decide whether a hearing was desirable and, if it were, whether counsel should be appointed.

9. Pursuant to the order, Defendant's trial lawyers filed a joint affidavit. The affidavit denies, paragraph-by-paragraph, Defendant's eleven allegations. The affidavit speaks for itself. It marginally adds to the record. Mostly, it reiterates the

court's original decision. In several instances, the lawyers could not understand Defendant's claims or the claims' bases.

10. Based on the record and the responses, a hearing did not seem desirable. Nevertheless, to provide a more complete record for appellate review of counsel's representation and to reduce the possibility that the court had missed a meritorious claim, the court posed a set of interrogatories to Defendant. The interrogatories were designed to tease-out the facts on which Defendant's allegations rested.

11. Defendant's answers to the court's interrogatories help clarify some of his claims:

- Even if true, Defendant's first claim, which was that the arrest warrant was "fraudulent" and beyond the issuing court's jurisdiction, remains inconsequential. Actually, the Warrant was issued by Justice of the Peace Court No.11, in New Castle County. Apparently, Defendant's claim rests on the Commitment issued by Justice of the Peace Court No. 2, in Sussex County. It appears that Defendant was taken in on the New Castle County Warrant. He was presented by video phone to a Justice of the Peace sitting in Sussex County because presentments are made to that magistrate statewide, by video phone and Defendant was sent to prison on the Commitment.
- Similarly, as the court already held, Defendant's claim that the indictment was forged was rendered

meaningless by the petit jury's verdict. Now, the court sees that Defendant's claim simply reflects the fact that when the grand jury returned the indictment, the foreperson signed two originals. Defendant was not indicted twice. And even if he were, he is not facing a second prosecution for the murder.

- Defendant's claim that the State failed to prove his intent merely reflects his admission that he does not understand that the jury was entitled to draw an inference about his state of mind based on what he did. The verdict reflects the evidence that: Defendant was jealous, possessive and controlling; the victim was trying to free herself from Defendant; Defendant armed himself; Defendant chased the victim; and he stabbed her repeatedly.
- Defendant's claim that the court was given a severed assault misdemeanor is based on Defendant's say-so. The court allowed the jury to hear about the earlier assault because of its bearing on his intent. But, the jury was not charged on it, nor did it render a verdict on the misdemeanor.
- Defendant's claim that a State's witness gave an inconsistent prior statement is accurate. The witness is the victim's son. The inconsistency was exploited by Defendant's trial counsel and it accounts for the acquittal on the kidnaping.
- Defendant's challenge to the jury instruction concerns the court's use of the pattern instruction on Defendant's burden of proof for his extreme emotional distress defense. The instruction did not suggest to the jury how it should view the evidence.

- Defendant admits that he is “unqualified” to explain his argument that he could not be sentenced both for murder and for using a deadly weapon to commit the crime.

12. As for Defendant’s ineffective assistance claims, Defendant recapitulates the various alleged errors presented above and in the earlier decision. As discussed before, the things on which Defendant relies were not errors or oversights. And, even if they were, they do not account for Defendant’s murder conviction. The overwhelming, incontrovertible evidence proving that Defendant chased the victim and stabbed her to death explains Defendant’s convictions, and it trumps Defendant’s claims.

13. Defendant’s interrogatory responses reveal one point that actually supports his ineffective assistance of counsel claim. In closing, while arguing away the extreme emotional distress defense, the State argued that a witness, Clavin Jones, had testified that Defendant had told Jones that Defendant was so mad at the victim “that she had a boyfriend, he could just kill her.” Jones did not testify to that threat by Defendant, and the defense did not object. The jury, however, was instructed to rely on its own recollection of the evidence. Even if the jury accepted the State’s argument about Jones’s testimony, that single embellishment did not cause Defendant to be convicted of the murder. As discussed repeatedly, the evidence proving

Defendant's guilt and undermining his affirmative defense was overwhelming.

14. Defendant has not presented a claim that makes an evidentiary hearing desirable. By the same token, there is no reason to appoint new counsel now. The court continues to hold that Defendant failed to overcome the presumption that he received effective assistance of counsel.⁵ Moreover, Defendant failed to meet either prong of *Strickland v. Washington*'s⁶ test for ineffectiveness of counsel.

For the foregoing reasons, the Prothonotary **SHALL** return the case to the Supreme Court of Delaware.

IT IS SO ORDERED.

Date: March 19, 2008

/s/ Fred S. Silverman
Judge

Cc: Prothonotary (Criminal)
James V. Apostolico, DAG
Dade D. Werb, Esq.
Ralph D. Wilkinson, IV., Esq.

⁵ *Albury v. State*, 551 A.2d 53, 58-60 (Del. 1988).

⁶ *Strickland v. Washington*, 466 U.S. 668-667 (1984).