SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

December 19, 2008

Edward C. Gill, Esquire
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Robert A. Ratliff, Esquire, *Pro Hac Vice*
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RE: *State of Delaware v. Raymond E. Bradley*, Def. ID# 92S05720DI (R-2)

DATE SUBMITTED: September 29, 2008

Dear Counsel:

Pending before the Court is a motion for postconviction relief which defendant Raymond E. Bradley ("defendant" or "Bradley") has filed pursuant to Superior Court Criminal Rule 61 ("Rule 61"). This is my decision denying the motion.

The facts of this case are well-developed in the Supreme Court's decision on appeal, *Bradley v. State*, 653 A.2d 304, 1994 WL 679717, at *1 (Del. Nov. 23, 1994) (TABLE). Thus, I quote therefrom:

> ... The defendant-appellant, Raymond E. Bradley ("Bradley"), was charged with Murder in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony. Following a jury trial, Bradley was convicted of both charges. ***
>
> ... On December 10, 1992, at around 7:00 p.m., Bradley arrived at the house of his

former girlfriend, Barbara Johnson ("Johnson"). While Bradley was there, Johnson received a phone call from her current boyfriend, the victim, James Joynes ("the victim"). Bradley and Johnson then argued. Bradley left after threatening those present that he would return to "kill every last one of [them]."

At around 2:00 a.m. the next morning, Bradley called Johnson to apologize. He also spoke to the victim, who was at Johnson's house. Later that morning, Bradley burst into Johnson's bedroom and found her engaged in sexual intercourse with the victim. The two men began to fight.

Johnson fled from the room and, along with her sister Rosemary Johnson ("Rosemary"), ran into the kitchen to hide the kitchen knives. Meanwhile, a male house guest, and another man, who had come to the house with Bradley, tried to separate Bradley and the victim.

... After separating the two, one of the men saw Bradley pull a knife out of his coat pocket. The two men who had interrupted the assault then fled. The victim also tried to escape, running naked into a back bedroom where Johnson was already hiding.

Bradley broke down the door to the bedroom. Johnson fled. Rosemary then entered the bedroom. She saw Bradley with a knife above the victim, apparently stabbing him. She grabbed the knife from Bradley, who thereafter ran from the house.

... When the police arrived, they found the victim, who had been stabbed several times. A medical examination established the knife wounds as the cause of the victim's death. Later that morning, the police arrested Bradley.

After waiving his Miranda rights, Bradley gave a lengthy statement. He admitted to most of the above facts, except he claimed the victim had initiated the fight and that the fight had not spread to the back bedroom. Bradley was covered in blood. It was later revealed that the blood was consistent with the victim's (and not Bradley's) blood type.

... At trial, Bradley testified on his own behalf. According to him, he "blacked out" during the fight. As part of his defense, Bradley introduced the expert testimony of Dr. Rosalind Kingsley ("Dr. Kingsley"). She testified that Bradley had a low threshold point at which he would react in an extreme manner to stress-inducing stimuli.

... The jury found Bradley guilty as charged.

Other factual matters necessary to this decision on the pending motion are added below.

At the time of the murder, Bradley lived with Linda Session. Ms. Session prepared and had Johnson sign a document, captioned "Affidavit", wherein Johnson claimed she was sexually involved with the victim and Bradley at the time of the incident; there was no confrontation or argument between the victim and Bradley at the time of the incident; she knew Bradley was coming over to borrow money that day; the fight was spontaneous and both the victim and Bradley initiated it; and she was the owner of the knife.[1] This Affidavit supported Bradley's

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[1]This Affidavit, which was admitted into evidence as Defendant's Exhibit #6, provided in full as follows:

> I, Barbara A. Johnson, being fully aware of the charges; Murder 1 and PDWCF, pending against Raymond E. Bradley, would like to come forward, due to ownership of the house ... my being present at the time of the alleged crime, and because of my involvement with victim Mr. James Joynes, and defendant Mr. Raymond E. Bradley. My knowing the nature of their relationship concerning my involvement and attest to the following facts:
>
> 1) I was sexually involved with both Mr. Joynes, and Mr. Bradley.
>
> 2) Mr. Joynes knew about my involvement with Mr. Bradley.
>
> 3) Mr. Bradley did not know about my involvement with Mr. Joynes.
>
> 4) Prior to and at the time of incedent [sic] resulting in the death of Mr. Joynes, there was no confrontation or argument between the two Mr. Joynes or Mr. Bradley.
>
> 5) I had spoke [sic] to Mr. Bradley on December 10, 1992, and prior to the incedent [sic]. We discussed the issue of myself giving Mr. Bradley some money. I was aware that he was going to be coming over to my residence to receive the money, but I did not know the specific time.
>
> 6) Mr. Bradley did not use forced entry to enter my home. He has had access to and possesses a key.
>
> 7) Mr. Joynes, and Mr. Bradley engaged in a fight spontaneously, both taking the initiative, after Mr. Bradley, [sic] walked in on Mr. Joynes and myself engaged in sexual intercourse.
>
> 8) I have limited knowledge as to who grabbed a knife or when ... however, I will state that I am familiar with and is [sic] the owner of the knife used in the incedent [sic].
>
> I, Barbara A. Johnson, state that on this 10 1993 [sic], the information that I have given you is fact as I know it. And that at no time was I coerced, forced,

version of events. However, Johnson's trial testimony was not in accordance with all statements made in this Affidavit. Although she did not see the stabbing itself, she testified to the events leading up to the stabbing in accordance with the facts set forth in the Supreme Court decision. Johnson admitted she signed the Affidavit, but explained she did not read the whole thing. Transcript of November 15, 1993, Proceedings at A-46. It was established that she did not read well and did not understand the words, "confrontation", "spontaneously", and "initiative". *Id.* at A-46-7. She did not know why she signed the document. *Id.* at A-48. The knife was not hers. *Id.* at A-48. On cross-examination, she disputed information in the document. She testified as follows. She was not having sexual relations with Bradley. *Id.* at A-119. She did not tell Session that the knife was hers; instead, she said she was missing a knife from her house, but the missing knife was a different knife. *Id.* at A-120-21. She did not read the document before she signed it. *Id.* at A-121.

In his pending motion, defendant ignores the testimony of Chris Jones that he saw defendant pull a knife out of his coat. *Id.* at A-162, A-163; A-169. Defendant also ignores the fact that after the stabbing, defendant told James Owens he had "`just got done cutting up Barbara's boyfriend.'" Transcript of November 16, 1993, Proceedings at B-151.

Bradley told his attorney he could not remember stabbing the victim; thus, a defense of self-defense was not available to him. Transcript of January 24, 1996, Proceedings at 35-6. His defense was extreme emotional distress.

The Trial Judge stated several times on the record that the evidence against defendant was overwhelming. Transcript of January 14, 1994, Proceedings at 4 and 10.

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threatened to give the above statement.

Defendant's recollection of the facts evolved over time.

His first recitation occurred during his interview with the police on December 11, 1992, the day of the murder. The jury listened to the tape of that interview. Therein, defendant told the police that he went over to Johnson's to get some money. He was not upset about her being with the victim. He walked in on them while they were having sex. He did not have on his coat at the time of the confrontation; the victim jumped him; they tussled; Bradley never had a knife; and the entire event took place in the front bedroom.

Because defendant's defense was extreme emotional distress, he had Dr. Rosalind Kingsley, a psychologist, testify that when defendant saw Johnson and the victim having sex, he experienced extreme emotional trauma. Dr. Kingsley concluded that defendant could not control himself at that time. Transcript of November 19, 1993, Proceedings at E-28. She reached her conclusion without reviewing the taped statement of the above-referenced police interview. *Id.* at E-29. Her conclusion was based on an interview with defendant. Defendant's recollection of the events as related to her was extremely more limited than his statement to the police. He recalled only that there was a fight and he had no weapons. *Id.* at E-16; E-17-18.

At the trial, defendant testified that after seeing Johnson and the victim together, somebody came towards him; Bradley swung; they got to fighting; all he saw were flashes before his face; and then next thing he knew, he was walking outside. Transcript of November 17, 1993, Proceedings at C-187- 89. He does not know if he saw a knife; he does not remember leaving the front bedroom. *Id.* at C-189.

At the hearing on Bradley's first motion for postconviction relief, Bradley offered another factual scenario. He stated as follows:

> [T]he reason why the weapon came into play is because Ms. Johnson had the weapon herself and Ms. Johnson was attempting to stab me, and that's how the decedent came in possession of the weapon. And when I confronted the decedent, I am saying, you know, under the circumstances at that present point of time, I am not aware of what is going on.
>
> It was an instant reaction between him and Ms. Johnson, but she assumed it was me that was coming to get her when she ran in the bedroom to hide behind the door. She did not know the decedent was coming in that bedroom. She thought it was me coming in there. She was in the bedroom hiding behind the door with a weapon intending to cut me with it. I mean, there is evidence on the record to support this.
>
> And when I come into the bedroom and I confronted the decedent, he was standing with the weapon in his hand and Ms. Johnson ran out. And I grabbed him and we struggled, and I stabbed him, and I made my attorney aware of this.

Transcript of January 24, 1996, Proceedings at 29-30.

To repeat, defendant has related the "facts" in ways which are advantageous to him in accordance with the point in time when he is relating those facts.

The Supreme Court affirmed the judgments of the Superior Court. *Bradley v. State*, 653 A.2d. The Supreme Court mandate was dated December 9, 1994. Thereafter, defendant filed motions for a new trial and for postconviction relief alleging ineffective assistance of counsel. The basis for the new trial motion was that newly discovered evidence since his trial established that Barbara Johnson committed perjury. Motion for New Trial, Docket Entry 67. This argument centered on whether the document admitted at the trial which Linda Session obtained was an "affidavit" in the legal sense. Defendant's "new evidence" was his legal argument it was legally sufficient as an affidavit and thus, Ms. Jones committed perjury. The ground for the postconviction motion was ineffective assistance of counsel.

A hearing was held on the motions on January 24, 1996. The Superior Court denied both motions. *State v. Bradley*, Del. Super., Def. ID# 92S0572DI, Lee, J. (May 7, 1996) (letter opinion), *aff'd*, Del. Supr., No. 232, 1996, Holland, J. (Dec. 11, 1996).

Now, fourteen years after his conviction became final and almost twelve years after the Supreme Court affirmed the denial of his first motion for postconviction relief, defendant has filed another motion for postconviction relief. Defendant asserts two grounds for relief, but expands only on the first ground. That ground is that "Bradley has learned through his supporters that Ms. Johnson has recently expressed an interest in contacting Bradley's family, for the purpose of helping Bradley." "Successive Motion for Post-Conviction Relief Under Delaware Superior Court Criminal Rule 61" at 1. This "recent" expression of interest is supported by defendant's affidavit **dated May 4, 2004**, wherein he asserts he has "learned through James Owens that Ms. Johnson has admitted that she would like to contact my family for the purpose of helping me." Affidavit of Raymond Bradley at ¶14. Although defendant submits an affidavit of James Owens, **dated September 15, 2004,** Mr. Owens never states that Johnson has admitted she would like to contact defendant's family for the purpose of helping defendant.

Defendant has no idea what Johnson might have said in 2004; consequently, he speculates that "[t]he only conceivable help Ms. Johnson could offer is to admit that she lied at trial. Her admissions would match the truthful statements she had made before trial. She would admit that she knew Bradley was coming to her home, that Bradley did not force his way into the home, that the knife came from her own kitchen, and that Bradley was not the aggressor." "Successive Motion for Post-Conviction Relief Under Delaware Superior Court Criminal Rule 61" at 1-2.

Defendant seeks a hearing on this matter. He understands that the procedural bars of Rule

61(i)(1) and (2) preclude a consideration of his claim.[2] Consequently, he argues that the miscarriage of justice exception in Rule 61(i)(5) provides a means for overcoming the procedural bars.

If, pursuant to Rule 61(i)(5), a defendant presents a "colorable claim" that there has been a miscarriage of justice, he or she may overcome the procedural bars of Rule 61(i). Newly discovered evidence may provide a "colorable claim". *Carello v. State*, 911 A.2d 802, 2006 WL 2950485 (Oct. 17, 2006) (TABLE). A recantation may be the basis for a new trial only if

> (1) the court is "reasonably well satisfied that the testimony given by a material witness is false," (2) without the evidence the jury might have reached a different conclusion, and (3) the false testimony took the party seeking the new trial by

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[2]The version of Rule 61(i), applicable to defendant provided as follows:

> *Bars to relief.* (1) Time limitation. 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.
> (2) Repetitive motion. Any ground for relief that was not asserted in a prior postconviction proceeding, as required by subdivision (b)(2) of this rule, is thereafter barred, unless consideration of the claim in warranted in the interest of justice.
> (3) 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.
> (4) 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.
> (5) 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.

> surprise and the party was unable to meet it, or the party did not know of its falsity until after the trial. [Footnote omitted.]

Cabrera v. State, 840 A.2d 1256, 1266 (Del. 2004) (*citing and quoting Blankenship v. State*, 447 A.2d 428, 433 (Del. 1982)). A motion for a new trial based upon a witness' recantation is viewed with suspicion and such a motion generally is decided without a hearing. *McCray v. State*, 781 A.2d 694, 2001 WL 760845 (Del. May 24, 2001) (TABLE).

A motion for a new trial based upon newly discovered evidence which is not a recantation is governed by the following standard:

> [T]he movant must establish that: (i) the new evidence likely would have changed the result of the trial; (ii) the evidence could not reasonably have been discovered before trial; and (iii) the evidence is not merely cumulative or impeaching.

Carello v. State, *supra* at *1 fn. 3.

In this case, defendant has not presented anything which constitutes "new evidence". There is no recantation from Ms. Johnson. There is no affidavit from anyone establishing there might be newly discovered evidence.

Since there is no recantation, the Court does not apply the factors set forth in *Carello v. State, supra. Downes v. State*, 1999 WL 743629 (Del. Super. Aug. 12, 1999) at *6, *aff'd*, 771 A.2d 289 (Del. 2001). Even if defendant produced a recantation as argued, the Court would not grant a new trial. The testimony would be the same as that set forth in the affidavit, which was submitted as evidence at the trial. Defendant cross-examined Johnson on the document. The jury had the opportunity to assess both versions of events: those set forth in the Affidavit which was submitted to the jury, and on which Johnson was cross-examined, and those to which Johnson testified at trial. Defendant clearly was aware to what Johnson was going to testify; that is why Linda Session prepared the affidavit. There was no surprise regarding her testimony. The only

surprise was Johnson did not testify to his version of events. Finally, the trial judge had the opportunity to consider whether Johnson's testimony was perjured during the initial motion for postconviction relief. He rejected the argument and explained that the jury had the right to make credibility determinations regarding Johnson and her testimony versus the statements in the Affidavit. Transcript of January 23, 1996, Proceedings. Thus, the Court would reject the proffered recantation by Johnson.

The next issue is whether defendant's assertion that James Owens said Johnson wanted to help defendant constitutes new evidence sufficient for a new trial. First, the information comes from defendant, whose version of events and amount of details have been based upon expediency. Defendant's affidavit is dated 2004. It now is 2008, and Johnson has not come forward. In addition, defendant submits a 2004 affidavit of James Owens which does not contain any statement that Johnson wanted to help defendant. Thus, defendant has not presented any credible evidence which is new. Absent the presentation of any new evidence, defendant has failed to present a colorable claim sufficient to entitle him to postconviction relief.

Even if the Court considered this to be new evidence, defendant cannot meet the test for a new trial. He has failed to show that the outcome would be different. He wants a second bite at presenting his case, this time proceeding with a self-defense argument. However, in all the proceedings at which he has testified and the statements he has given, defendant has yet to state that he believed his own life was in danger or that he needed to defend himself by using deadly force. He was not able to make those statements because in his various versions of the event, he maintains he does not remember what happened once he and the victim started tussling. Thus, defendant cannot establish a defense of self-defense, *Perkins v. State*, 920 A.2d 391, 398 (Del.

2007); *Fetters v. State*, 436 A.2d 796 (Del. 1981), and consequently, he cannot show the outcome of the trial would be different. Because defendant cannot meet this prong, and because the Court has spent considerably more time on this matter than is warranted, it will not review any of the other prongs of the new evidence test.

I now turn to defendant's second ground for postconviction relief, which is summarized as "Suppression of exculpatory evidence." He states that the prosecutor advised James Owens not to tell the jury any information about the fact that defendant was bleeding from an apparent wound. He further states that this evidence was exculpatory and would have supported defendant's defense of self-defense. He provides an affidavit of James Owens dated September 15, 2004, in support of this contention.

Defendant does not pursue this argument in his supporting papers. He does not make any attempt to overcome the procedural bars of Rule 61. Consequently, the motion is denied. Furthermore, he does not show how the outcome of the trial could have been different. Again, as noted earlier, defendant cannot establish the defense of self-defense because he could not remember what occurred during the fight. This claim fails, also.

In conclusion, defendant's motion is denied.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office
Attorney General's Office
E. Stephen Callaway, Esquire