

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

STATE OF DELAWARE,)	
)	
)	ID No.: 0009007758
v.)	CR.A.: IN-00-09-1542-R2, 1252-R2,
)	1526-R2, 1527-R2, 1528-R2 &
)	1529-R2,
EDMUND F. BAILEY,)	IN-00-10-0309-R2, 0310-R2,
Defendant.)	0311-R2, 0312-R2 & 0313-R2
)	

Submitted: July 28, 2009
Decided: October 19, 2009

ORDER

Upon Defendant's Second Motion For Postconviction Relief – *DENIED*

1. On April 17, 2009, Defendant filed this, his second motion for postconviction relief challenging his April 2002 conviction and lengthy prison sentence for major weapons and drug-related offenses. As he did through a pretrial motion to suppress and in his first motion for postconviction relief, Defendant challenges the warrantless, video surveillance of the rented self-storage locker Defendant used for illegal, drug-related activity.

2. Now, Defendant argues that *LeGrande v. State*,¹ and *Culver v.*

¹947 A.2d 1103 (Del. 2008).

*State*² should be applied retroactively, and they mandate suppression of the evidence obtained through the video surveillance. Also, embedded in Defendant's motion is a request for recusal. Defendant argues that having presided over the suppression hearing and trial, the assigned trial judge should not decide this motion for postconviction relief. The State opposes postconviction relief.

3. The claim for recusal is confounded by Superior Court Criminal Rule 61(d)(1), which provides: "The original motion [for postconviction relief] shall be presented promptly to the judge who . . . presided at trial in the proceedings leading to the judgment under attack."³ Thus, Rule 61 contemplates no recusal. Moreover, Defendant's argument to the contrary notwithstanding, the court has no subjective or objective reason for recusal. Finally as to recusal, the claim is procedurally barred because Defendant did not raise it when the court considered his first motion for postconviction relief.⁴

4. Otherwise, *LeGrande* and *Culver* do not apply retroactively here.⁵ Even if they did, their facts are very different from this case's. Confidential

²956 A.2d 5 (Del. 2008).

³ See also *Webb v. State*, 2005 WL 3200440 (Del. Supr. Nov. 28, 2005).

⁴ Super. Ct. Crim. R. 61(i)(2).

⁵ *Teague v. Lane*, 489 U.S. 288, 310 (1989).

informants played a part in developing Defendant as a suspect and they are mentioned in the search warrants' affidavits. Nevertheless, in sharp contrast to *LeGrande's* and *Culver's* facts, before the police asked for a search warrant, the police personally observed criminal behavior that not only corroborated the informants, it provided an independent basis for the search warrant. Besides the damning video surveillance, the police smelled a distinctive odor from the storage locker. That also led them to believe drugs would be found inside, and so on.

5. Perhaps most importantly, the search warrant's validity has been litigated. As mentioned, Defendant filed a motion to suppress the video surveillance and its fruits, which the court denied in a written order.⁶ Upon conviction, Defendant filed an appeal, which the Supreme Court dismissed after Defendant failed to file a brief.⁷ Basically, Defendant is trying to use *LeGrande* and *Culver*, which are not on-point, as a way around Defendant's procedural default.

6. Finally, the court again rejects Defendant's argument that the suppression decision reflects an ends-justifying-the-means approach. The ruling explains how the video surveillance was reasonable under the circumstances. Recapping that decision is unnecessary as it speaks for itself and, for the reasons

⁶*State v. Bailey*, 2001 WL 1739445 (Del. Super. Nov. 30, 2001), *aff'd*, *Bailey v. State*, 2003 WL 193540 (Del. Supr. Jan. 24, 2004).

⁷*Bailey v. State*, 2005 WL 850415 (Del. Supr. April 11, 2005).

presented above, the claim is procedurally defaulted.

Defendant's second motion for postconviction relief is **DENIED**.

IT IS SO ORDERED.

Judge

oc: Prothonotary (Criminal)
pc: Joelle Wright, Deputy Attorney General
Edmund F. Bailey, Defendant