

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE

v.

TIARA M. ABSHER	*DEF. ID# 1302009706, 1302015297
DESIREE A. ARICIDIACONO	*DEF. ID# 1207020413
CATHERINE A. BAKER	*DEF. ID# 1207010646
BRANDON BARNES	*DEF. ID# 0911018529
THOMAS G. BARNETT	*DEF. ID# 1202018172
JOSHUA N. BATISTA	*DEF. ID# 1112006247
JUSTIN BATTAGLINO	*DEF. ID# 1302011795
GERALD D. BOYCE	*DEF. ID# 1303017067
GERALD D. BOYCE	*DEF. ID# 1301009639
HOLLY BOYLES	*DEF. ID# 1306007426
MICHAEL BREWER	*DEF. ID# 1306003504
MICHAEL CHAMBERS	*DEF. ID# 1302009774, 1207000917
BRENT CIERKOWSKI	*DEF. ID# 1301011317
SHAMIKA T. CLARK	*DEF. ID# 1309016779
MELVIN A. COLON	*DEF. ID# 0912001668
MELVIN A. COLON	*DEF. ID# 0908026157
DANYELLE CORMIER	*DEF. ID# 1308019353
VINCENT L. DAVIS	*DEF. ID# 1101018584
JOSEPH A. DICKERSON	*DEF. ID# 1305011177
MICHAEL H. DRUMMOND	*DEF. ID# 1303011351, 1208005369
BRYAN W. EVANS	*DEF. ID# 1204012408
TYRONE C. FASSETT	*DEF. ID# 0904021875
AARON FLOYD	*DEF. ID# 1004021822
CHRISTINE C. FOX	*DEF. ID# 1202008240
LEON N. FRAZIER	*DEF. ID# 1211000503
NICHOLE M. FULMER	*DEF. ID# 1303015913, 1002000292
BRANDON R. GARRISON	*DEF. ID# 1009009509
MICHAEL A. GRAVER	*DEF. ID# 1001007988
MICHAEL R. GRAY	*DEF. ID# 1305006760
BENJAMIN L. GREENE	*DEF. ID# 1105023530
CHARLES HAMMOND	*DEF. ID# 1103009953
MARQUIS HEMBREE	*DEF. ID# 1303007311

BRITTANY HITCH	*DEF. ID# 1305007702
JAMES D. HITCHENS	*DEF. ID# 1210002040
ERIC L. HOWELL	*DEF. ID# 1310002807
JESSICA N. HUDSON	*DEF. ID# 1103027031, 1004000339
WILLIAM HUTSON	*DEF. ID# 1310009560
HARPER JARVIS	*DEF. ID# 1306002178
MARCUS L. JOHNSON	*DEF. ID# 1311004531
QUENTIN JONES	*DEF. ID# 1004005306
SAMUEL JONES	*DEF. ID# 1309003876
MICHAEL D. KINGERY	*DEF. ID# 1012001080
LOUIS LAWS	*DEF. ID# 1202002780
LEONA G. MANN	*DEF. ID# 1010002268
EDWIN S. MARTINEZ	*DEF. ID# 1001008451
JAMES K. MAY	*DEF. ID# 1212014473
JAMES C. MCNEILL	*DEF. ID# 1212013720
SCOTT P. MITCHELL	*DEF. ID# 1207020630
KARAM M. MOSLEY	*DEF. ID# 1308009510
STORM NORMAN	*DEF. ID# 1311010364
SHAQUILL D. NORWOOD	*DEF. ID# 1108002848
HASAN A. ONEY	*DEF. ID# 1208022921
CHADDIX I. PARKER	*DEF. ID# 1010001648
MELISSA PARKER	*DEF. ID# 1302008699
LEIGHA R. PARKINSON	*DEF. ID# 1309010830
GREGORY L. PAYTON	*DEF. ID# 1003004374
COREY J. PFEIFFER	*DEF. ID# 1211023138
JOSE R. PORTAL	*DEF. ID# 1211020816
DEBRA A. RAYNE	*DEF. ID# 1310006889
JAMES R. RICHARDSON	*DEF. ID# 0910018318
ROBERT C. RICKRODE	*DEF. ID# 1004013525
ALAN D. ROBERTSON	*DEF. ID# 1206009871
JAMES W. SHEPPARD	*DEF. ID# 1312017204, 1301021440
ERIK L. SINGLETARY	*DEF. ID# 0911003197
STEPHON R. TANKARD	*DEF. ID# 1310006837
RUSSELL R. THOMAS	*DEF. ID# 1210000227
ELTORIA L. THOMPSON	*DEF. ID# 1201018829
RAINY WALLACE	*DEF. ID# 1310002892
JOSHUA A. WARD	*DEF. ID# 1303000691
JOHN W. WHITBY	*DEF. ID# 1307020110
BRANDON WHITE	*DEF. ID# 1310010990
CURTIS WILLIAMS	*DEF. ID# 0912010676

OTIS WILLIAMS
CAMERON A. WILSON
CAMERON A. WILSON

*DEF. ID# 1311004517
*DEF. ID# 1010021660
*DEF. ID# 1308005976

ORDER

The Court makes the following findings in regard to the Postconviction Motions filed by the Public Defender's Office in which the conviction was based on a guilty plea:

- 1) Other than a change of the defendant's name, all of these filings are identical. Each filing alleges that the problems discovered in 2014 at the Medical Examiner's Office (M.E.O.) require the drug convictions to be vacated. Each motion states the drugs seized in each case was sent to the M.E.O. for testing. No M.E.O. test results were included in any of the motions. There have been no claims of reliance on an M.E.O. report as a basis for the admissions at the guilty plea.
- 2) The Court notes that in the review of the files, many of the guilty pleas were entered early in the time line of the case, which means the drugs were never tested by the M.E.O. This is not unusual as the Court's "fast track" calendars and case review calendars are scheduled prior to the possibility of testing being completed.
- 3) When the defendant entered a guilty plea, there was a colloquy wherein the defendant personally admitted and acknowledged his or her guilt. The defendant's plea establishes he/she knew what the substance was and that he/she admits to having possessed, delivered, etc. A defendant is bound by his or her representations to the Court absent clear and convincing evidence to the contrary. *Sommerville v. State*, 703 A.2d 629, 632 (Del. 1977).
- 4) There is no clear and convincing evidence to contradict each of the defendant's admissions to the Court. Matters concerning the mischief at the M.E.O. were recently reviewed by The Honorable William C. Carpenter, Jr. His findings were that evidence was being pilfered for

- personal use or otherwise, not that there was “planting” of evidence for purposes of a false conviction. Nor was there evidence that the substances actually tested by the chemist were false. *State v. Irwin*, I.D. No. 1309012464, (Del. Super., Nov. 17, 2014).
- 5) The conclusions contained in the aforementioned paragraph are also conclusions that are supported by the common sense inference that whoever was pilfering evidence was doing so to get illegal drugs as opposed to planting illegal drugs.
 - 6) In none of the motions were there any claims of actual innocence.
 - 7) Until January, 2014, nobody had any evidence of M.E.O. problems or issues. Therefore, there is no retroactive *Brady* violation for failing to report what was not known. The Court does not find that an individual in the chain of evidence who stole evidence gives rise to a presumptive due process violation requiring vacating all guilty pleas. I do not find that the drug thefts by one or more persons results in the entire plea bargain process becoming retroactively “broken” as argued by defense counsel.
 - 8) The Court notes that in many of these cases, the defendant is neither incarcerated nor on probation due to the age of the case. Therefore, there can be no Rule 61 relief as the matter is moot. *Ruiz v. State*, 956 A.2d 643 (Del. 2008). Finally the Court notes that the motions make no claim of collateral burdens. *Anderson v. State*, Del. Supr., No. 136, 2014, Holland J. (Nov. 11, 2014).
 - 9) It was acknowledged at argument by the defense that if the guilty pleas are vacated and the cases are set down for trial that prosecution would be improbable because of the age of the cases and destruction of the evidence.
 - 10) Plea negotiations and plea bargains are engrained in our criminal justice system. Plea bargains involve compromises which also involve the reduction of risk and consequences of a trial verdict. There is an implicit cost benefit analysis in each plea and also as to when to enter a guilty plea. Each defendant had the opportunity to hold the State to its burden of proof at trial. By pleading guilty, each defendant waived the right to force the State to present its evidence.

11) On November 18, 2014, the Public Defender filed amendments to the previously filed Postconviction Motions on behalf of 46 of its clients. The original motions argue that the guilty pleas entered in each case should be vacated because of *Brady v. Maryland* violations and the amended motions argue that the failure of the State to disclose general impeachment evidence renders each plea involuntary.

This Court agrees with the majority of the cases cited by the defense, but I do so based on the particular facts of those cases.

Each of the cases had specific evidence of egregious conduct by a state agent specifically tied to the defendant. *Commonwealth v. Rodriguez*, 2013 WL 2420416 (Mass. Super.) and *Commonwealth v. Scott*, 5 N.E.3d 530 (Supreme Judicial Ct. Mass. 2014) both involve medical examiner issues. Both involve the same rogue lab examiner/chemist who acknowledged creating false reports. Those decisions found that the lab examiner/chemist was a state agent that committed egregious conduct involving the defendant's case. The defendant was then required to establish had he known of the misconduct, he would have never entered his guilty plea.

The Texas case had a similar holding in regard to a "bad" chemist producing false reports as to drug testing. In *Ex Parte Leroy Edward Coty*, 418 S.W.3d 597 (Tex. Crim. App. 2014), the Court did not find that every case in which that "bad" chemist was involved created a "presumptive due process violation." The Court held that to withdraw his guilty plea, the defendant had to establish false evidence which was material to his conviction. The Court noted the defendant would need

to show (1) the bad lab technician was a state actor, (2) who committed multiple instances of intentional misconduct and (3) who did the chemical analysis in the defendant's case in a (4) time frame as to the known false reports. Finally, and important to the Delaware cases, (5) the misconduct is the type of misconduct that would have affected the evidence in the applicant's case.

In considering whether or not the conduct of the unknown "bad" actor in the M.E.O. gives rise to a presumptive due process problem or creates a presumption of involuntariness as to the plea, I again look to the decision of Judge William C. Carpenter, Jr. released on November 17, 2014. *State v. Irwin*, ID No. 1309012464 (Nov. 7, 2014). In his decision, he recognized his findings would impact those cases in which testing was done in the past and there were convictions.

Today, the Court is only addressing convictions based on a guilty plea, an admission of wrong doing. Today's ruling does not address those cases in which the defendant was convicted following a trial nor does it address a "no contest" guilty plea wherein there was no admission by the defendant.

Based on the findings of Judge Carpenter, I find that the pilfering or stealing of some of the drugs that passed through the M.E.O. by an unknown individual is not the type of evidence that falls into the egregious conduct noted in the cases argued by the defense.

Judge Carpenter noted what was not found, i.e., no evidence of misconduct by the police (planting false evidence) or any evidence that the drugs that were improperly tested or any evidence that the chemists were creating false reports.

What Judge Carpenter recognized is important to repeat – there were systematic failures in protocol resulting in evidence (drugs) being stolen, but this does not equate to a finding of unreliability and a wholesale suppression of evidence.

The thefts were wrong, but these collateral thefts do not give rise to egregious misconduct impacting each of the defendants who pled guilty. As noted in *Ex Parte Leroy Edward Coty*, this conduct is not the type of conduct that affects evidence in the individual guilty pleas.

In fact, as previously noted, many of the guilty pleas took place prior to the opportunity to even have the substances tested. The present fungible motions do not even address whether or not a M.E.O. report was provided to the defense.

Therefore, the Court concludes that the Defendants have not established that their guilty pleas were involuntary.

Each of the following “guilty plea” M.E.O. Rule 61 motions are dismissed for the reason that the defendant admitted at his or her guilty plea that the substance was what was alleged and/or the defendant has been discharged from probation and/or the Public Defender’s Office does not oppose dismissal.

Additionally, the Court finds the M.E.O. issues do not warrant a finding of actual or presumptive involuntariness of the guilty pleas.

IT IS SO ORDERED.

T. Henley Graves

DATED: _____

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v.

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JOSE R. PORTAL	*	DEF. ID# 1211020816 - Dismissed/No Objection
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CAMERON A. WILSON	*	DEF. ID# 1308005976 - Pled