IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	)	
	)	
	)	
v.	)	
	)	**Case No. 1211000093**[1]
	)	
SYE NEWTON	)	
	)	

OPINION

Submitted: September 14, 2016
Decided: December 30, 2016

Upon Defendant's Motion for Judgment of Acquittal, **DENIED.**
Upon Defendant's Motion for a New Trial, **DENIED.**
Upon Defendant's Motion for Arrest of Judgment, **DENIED.**
Upon Defendant's Motion to Correct Docket, **GRANTED.**
Upon Defendant's Motion for Rebuttal of Habitual Offender Designation, **MOOT.**
Upon Defendant's Motion for Continuance, **MOOT.**
Upon Defendant's Motion to Supplement Motion for New Trial and Request for Conference, **DENIED.**
Upon Defendant's Motion to Compel Hearing for Legal Communications, **DENIED.**
Upon Defendant's Motion Hearing and/or Dismissal, **DENIED.**
Upon Defendant's Motion to Amend Motion for Recusal, **DENIED.**
Upon Defendant's Motion to Dismiss, **DENIED.**
Upon Defendant's Motion to Compel Show Cause Hearing, **DENIED.**
Upon Defendant's Motion to Compel Assistance of Investigative Services, **DENIED.**
Upon Defendant's Motion to Compel Hearing, **DENIED.**
Upon Defendant's Motion for Relief from Judgment or Order, **DENIED.**

Daniel B. McBride, Deputy Attorney General, Department of Justice, 820 North French Street Wilmington, DE 19801, *for the State*.

Sye Newton, SBI # 00463671, James T. Vaughn Correctional Center, 1181 Paddock Road, Smryna, DE 19977, *pro se*.

BRADY, J.

[1] The Defendant included Case No. 0805017969 in his captions, on occasion, but the only case before this Judge is the one included in this caption.

I. INTRODUCTION & PROCEDURAL BACKGROUND

Pending before the Court are fifteen Motions filed by Sye Newton ("Defendant") which relate to an incident that occurred on October 19, 2012 at the James T. Vaughn Correctional Facility, where Defendant is currently incarcerated. Defendant stabbed another inmate, David Vansant, allegedly as some form of protest to what Defendant purports to be constitutional violations at the prison. On December 3, 2012, Defendant was indicted on charges of Assault in a Detention Facility, Possession of a Deadly Weapon During the Commission of a Felony, and Possession of a Deadly Weapon by a Person Prohibited. On April 23, 2013 the Court granted Defendant's Motion to discharge appointed counsel and proceed in his defense *pro se*. On May 14, 2013 the Court granted Defendant's request for a continuance of the trial date. On September 19, 2013, after a two-day jury trial, Defendant was found guilty of Assault in a Detention Facility and Possession of a Deadly Weapon During the Commission of a Felony.[2]

In support of his various Motions, Defendant either incorporates by reference or raises, the following contentions: (1) physical evidence material to Petitioner's defense may have been intentionally destroyed, but was certainly lost while in possession of the State, violating *Brady*, *Lolly*, and *DeBerry*, which resulted in Defendant receiving an unfair trial; (2) the Court erred when it provided the jury with an instruction that consent is not a valid defense to the crime of Assault in a Detention Facility, precluded Defendant from presenting a valid defense, or in the alternative "consent" should have been considered to negate the requisite *mens rea* for the assault charge; (3) Defendant is a German citizen and should be entitled to serve out the remainder of his prison time in Germany under an international prison transfer agreement; and (4) this Court

[2] The State entered a *nolle prosequi* on the Possession of a Deadly Weapon by a Person Prohibited charge. *See* Confirmation of *Nolle Prossequi*, *State v. Sye Newton*, Id. No. 1211000093, Docket No. 30 (Sept. 19, 2013).

has a continuing conflict of interest, as this Judge is named in a civil motion filed by Defendant, and because I previously served as Attorney General for the State of Delaware.

Various motions were filed, on a continuing basis, since the Defendant was convicted. He has requested, and the Court ordered and provided, transcripts of the trial so he could prepare his post-trial motions. The State has filed responses on several occasions. The Court has held several hearings, and the Defendant finally filed his last response to the State's submissions in September, 2016. This is the Court's decision on all outstanding matters.

II. Facts

On October 19, 2012 Defendant was showering in the Secured Housing Unit of James T. Vaughn Correctional Center, ("JTVCC").[3] As another inmate, David Vansant, was being escorted out of the shower facility by two correctional officers, Defendant grabbed Vansant's shirt and tried to pull him closer to the shower cell in which Defendant was located.[4] During this altercation, Defendant struck Vansant in the face with a closed right fist.[5] Vansant suffered a cut to his face and had to be treated by prison medical personnel.[6] At that point, one of the officers began to spray Defendant with his pepper spray.[7] Defendant released Vansant and moved towards the back of the cell.[8] Defendant then threw a metal shank out of his shower cell from his right hand.[9] The shank had a metal handle and the sharp end was three to four inches in length.

III. Discussion

Motion for Judgment of Acquittal

[3] Trial Transcript, *State v. Sye Newton*, Id. No. 1211000093, Docket No. 58, p. 15 (Sept. 18, 2013).
[4] *Id.*, at p. 23-24.
[5] *Id.*, at 24.
[6] Id. at 24, 28.
[7] *Id.*, at 24.
[8] *Id.*, at 24.
[9] *Id.*, at 24.

Defendant argues that under Rule 29(a),[10] the State presented insufficient evidence that the weapon used during the attack fits the statutory definition of a "deadly weapon," and therefore the Court must enter a judgment of acquittal, notwithstanding the guilty verdict for Possession of a Deadly Weapon During the Commission of a Felony.

The Court is required to enter a judgment of acquittal if the evidence presented by the State is insufficient to prove the offenses charged in the charging document.[11] When ruling on a motion for acquittal, the Court must consider all of the evidence that has been presented to support the charge, as well as any legitimate inferences drawn from that evidence.[12] All evidence and inferences considered by the Court must be in the light most favorable to the State.[13]

"Deadly weapon" is defined in the Delaware Code as "a knife of any sort (other than an ordinary pocket knife carried in a closed position) . . . *or* any dangerous instrument . . . which is used, or attempted to be used to cause death or serious physical injury."[14] Defendant contends the object recovered by officers after the incident does not meet this definition, because the weapon was bent into an "L-shape" so the pointed end rested against his fist as he punched the Victim. As a result, Defendant argues it would have been impossible to seriously injury the Victim.

As the State points out, the statutory language stating "to cause death or serious bodily injury" applies only when the weapon used is not a knife or any of the stated *per se* deadly weapons.[15] The "shank," which Defendant admits to possessing during the attack, as described

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[10] 6 *Del. C.* § 29(a) (1998).
[11] *Id.*
[12] *Vouras v. State*, 452 A.2d 1165, 1169 (Del. 1982).
[13] *Id.*
[14] 11 *Del. C.* § 222(5) (2012)(emphasis added).
[15] *See id.* (listing "switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain or ice pick *or* any 'dangerous instrument,' as defined in paragraph (4) of this section, which is used, or attempted to be

by the officers, could be found by the jury to constitute a *per se* deadly weapon;[16] in which case, the requirement that it be capable of causing serious bodily harm or death when it is used is not controlling. Two witnesses[17] testified that they saw and inspected the shank and neither witness attested to the unique L-shape that Defendant claims. Both officers claimed they saw Defendant discard a metal, pointed object after they were able to stop Defendant's attack on the Victim. Both officers claimed that the shank was made of metal, and specifically described the sharpened end as being a three-to-four inch blade.[18] Defendant agrees with Sergeant William's testimony that the "shank" was made from the bottom of a Comet cleaning can, and was a pliable metallic object with one blunt end and one sharpened end.[19] Defendant contends that the shank was rendered non-lethal and incapable of inflicting serious bodily injury because of its shape. The shank , however, did cause injury, and, given the natural qualities of a sharp metal object, it could easily be inferred by the jury that it was capable of causing more serious injury or death, given the manner with which the Defendant used the object.

Had the jury been instructed to consider only whether the shank was a knife under the "deadly weapon" definition, it is more likely that Defendant would have been entitled to a missing evidence instruction.[20] However, the jury was also instructed that it could find that the shank was a deadly weapon if it met the second portion of the definition of a "deadly weapon." Even if the jury concluded that the shank was not a "knife" as Defendant contends it was not, the definition of "deadly weapon" includes "any instrument which, under the circumstances in which

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used, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocketknife shall be a folding knife having a blade not more than 3 inches in length" as *per se* deadly weapons) (emphases added).

[16] 11 *Del. C.* § 222(5) (2012). *See also*, *Ciprick v. State*, 1981 WL 376964, at *2 (Del. Super. June 5, 1981) (finding that a deadly weapon is presumably dangerous *per se*)).

[17] The witnesses were Corrections Officers.

[18] Trial Transcript, *State v. Sye Newton*, Id. No. 1211000093, Docket No. 58, p. 29, 85 (Sept. 18, 2013).

[19] *See* Def.'s Mot. for Judgment of Acquittal, D.I. 31, p. 5.

[20] The issue of whether the Defendant was entitled to a *Deberry* or *Lolly* instruction is discussed, *supra*.

it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury."[21] The jury was so instructed.[22]

The State presented sufficient evidence that would allow a reasonable jury to conclude that, under the circumstances, the shank was capable of causing serious physical injury or death. The Defendant acknowledges he struck the victim with his right hand which held a sharpened, pointed object made of metal.[23] The victim was injured on the face as a result. Considering all of the evidence and drawing legitimate inferences from that evidence in a light most favorable to the State, the jury could have reasonably concluded the shank met this portion of the definition of "deadly weapon." Defendant's Motion for Judgment of Acquittal is **DENIED**.

Motion for a New Trial

Superior Court Criminal Rule 33 provides, in pertinent part:

> 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, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 7 days after verdict or finding of guilty or within such further time as the court may fix during the 7-day period.[24]

Defendant's Motion for New Trial was filed on September 30, 2013 more than seven days after conviction.[25] Therefore, the Court can only consider Defendant's Motion on the grounds of newly discovered evidence. Defendant contends the State suppressed evidence in violation of *Brady v. Maryland*.[26] Specifically, Defendant argues the State suppressed evidence

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[21] 11 *Del. C.* § 222(5) (2012).
[22] *See* Instructions to the Jury, *State v. Sye Newton*, ID. No. 1211000093, D.I. 28, p. 8, n. 3 (Sept. 19, 2013) (A "deadly weapon" includes a knife of any sort other than an ordinary pocket knife carried in a closed position or any instrument which, under the circumstance in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury.)
[23] *See* Def.'s Mot. for Judgment of Acquittal, D.I. 31, p. 5.
[24] Super. Ct. Crim. R. 33.
[25] Defendant contends it was filed earlier. That issue is addressed *supra*.
[26] Def.'s Mot. for a New Trial p. 2.

surrounding the reason why Internal Affairs Officer Bill Price is no longer employed and the missing status of the shank used in the attack, violating Defendant's right to due process.[27]

After the attack took place inside the prison, Investigator Bill Price was assigned to investigate the case by the Internal Affairs Unit at JTVCC.[28] Investigator Price was charged with gathering and storing the evidence for trial.[29] In the days leading up to the trial, it became known to the State that the shank could not be located, despite the fact that officers recovered it after the incident.[30] Lt. Daum, who was the shift commander when the incident took place, and was involved in the initial collection of evidence, informed the State that Investigator Price was no longer with the Internal Affairs Unit and they were having difficulty finding the weapon.[31] When the Unit confirmed that the evidence was indeed lost, they were unable to provide an explanation.[32] On the morning of the trial, the State informed Defendant and his standby counsel that the evidence had been lost.[33]

The United States Supreme Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to either guilt or punishment, irrespective of the good faith or bad faith of the prosecution."[34] Defendant asserts he "had the right and the jury as fact finders were entitled to hear if the [State's] witness had intentionally concealed, altered, [or] destroyed . . . favorable evidence [from] the defense. The State contends, to this Court's satisfaction, that they are unaware of any

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[27] *Id.*
[28] State's Resp. to Def.'s Mot. for Judgment of Acquittal and Mot. for a New Trial ¶ 18.
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.* at ¶ 19.
[33] State's Resp. to Def.'s Mot. of Acquittal and Mot. for a New Trial ¶ 19.
[34] *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

evidence that Investigator Price or anyone else intentionally concealed, destroyed, or otherwise altered any evidence during the trial.[35]

Defendant further argues that failure to produce the weapon at trial as evidence constitutes a violation of his right to due process.[36] Defendant states the shank is exculpatory because it was bent on a ninety-degree angle, and this unique angle rendered the shank incapable from causing serious injury or death.

"[T]he failure of the government 'to take adequate steps to preserve evidence may deny a defendant due process and thereby jeopardize otherwise viable convictions.'"[37] In *Deberry*, the Delaware Supreme Court held that the State's duty to disclose evidence includes a duty to preserve it, which extends not only to the Attorney General's office, but all local, county, and state investigative agencies.[38] When reviewing a claim that the State failed to preserve potentially exculpatory evidence, the Court must consider: "(i) whether the requested material, if in the possession of the State at the time of the request, would have been subject to disclosure under Superior Court Criminal Rule 16 or under *Brady v. Maryland*;[39] (ii) if so, whether the State had a duty to preserve the material; and (iii) if there was a duty to preserve, whether the State breached that duty and what consequences should flow from that breach."[40]

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[35] State's Resp. to Def.'s Mot. of Acquittal and Mot. for a New Trial ¶ 17.
[36] Def.'s Mot. for a New Trial p. 2.
[37] *Deberry v. State*, 457 A.2d 744, 751 (Del. 1983) (quoting *Government of the Virgin Islands v. Testamark*, 5701 F.2d 1162, 1165-66, N. 7 (3d Cir. 1978)).
[38] *Id.*
[39] There are three components to a *Brady* violation: "(1) evidence exists that is favorable to the accused, because it is ether exculpatory or impeaching; (2) that evidence is suppressed by the State; and (3) its suppression prejudices the defendant." *Wright v. State*, 91 A.3d 972, 988 (Del. 2014) (quoting *Starling v. State*, 882 A.2d 747, 756 (Del. 2005) (citing *Stickler v. Greene*, 527 U.S. 263, 281-82 (1936))). With regard to the third component, a defendant is not required to show that the disclosure of the suppressed evidence would have resulted in acquittal, rather "the defendant must show that the State's evidence creates 'a *reasonable probability* that, had the evidence been disclosed the result of the proceeding would have been different.'" *Id.* (emphasis in original).
[40] *McCrey v. State*, 2008 WL 187947, at *2 (Del. Jan. 3, 2008) (citing *Brady v. Maryland*, 373 U.S. 83 (1963); *Wainer v. State*, 2005 WL 535010, at *2 (Del. Feb. 15, 2005); *Hammond v. State*, 569 A.2d 81, 85-87 (Del. 1989); *Lunnon v. State*, 710 A.2d 197, 199-200 (Del. 1998); *Deberry*, 457 A.2d at 750).

In determining what consequences should flow from a breach of the State's duty to preserve evidence, the Court must draw a balance between the nature of the State's conduct and the degree of prejudice to the accused.[41] The State must justify the conduct, and the defendant must show how his defense was impaired by the loss of the evidence.[42] In general, the court should consider "(1) the degree of negligence or bad faith involved, (2) the importance of the lost evidence, and (3) the sufficiency of the other evidence adduced at the trial to sustain the conviction."[43]

There is no evidence to explain what happened to the shank. It may have been lost or misplaced or perhaps thrown away by Investigator Price when he left. What happened is simply unknown. On evaluating the circumstances, there is no evidence of bad faith, but there is clear negligence in failing to produce the item. The Defendant would have been in the same position at trial had the shank been negligently lost, or intentionally destroyed. Defendant was allowed to cross-examine the witnesses about the missing evidence and Investigator Price's employment status. The jury was informed by both the State and Defendant that the shank could not be located and Investigator Price was no longer employed by JTVCC, and the Investigator was the person responsible for the storage of the evidence.

The evidence which was lost is important – it is the weapon by which the Defendant is alleged to have inflicted injury on another inmate. The appearance of that object would have key and material significance if the sole basis upon which the jury might have determined guilt was whether the object constituted a "knife of any sort other than an ordinary pocket knife carried in a closed position . . ."[44] Given the Defendant's contradictory description of the appearance of the

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[41] *Deberry*, 457 A.2d at 751.
[42] *Id.*
[43] *Id.* (quoting *United States v. Loud Hawk*, 628 F.2d 1139, 1152 (9th Cir. 1979)).
[44] 11 *Del. C.* § 222(5) (2012).

item, what it actually looked like was in dispute – one description was of a "knife;" another (the Defendant's) was of a bent, sharpened piece of metal. The jury, however, had evidence and law before it that an object, depending on how it was used or attempted to be used, could constitute a deadly weapon.[45] Three eye witnesses testified to observing the attack (one, the Victim) and the Defendant admitted attacking the victim and striking him with the hand that held a sharp, metal object. The Court is satisfied there has not been a showing that there is a reasonable probability, had the shank been presented to the jury, that the result would have been different, or that the Defendant was impaired in his defense, given his own description of the object. The Court finds no *Deberry* or *Lolly* instruction was justified under all the circumstances, and that the State did not violate *Brady*, as it informed the Defendant, shortly after learning the evidence was lost, of the circumstances.

Further, none of this information is new evidence, required to meet the standard to grant a new trial. Defendant's Motion a New Trial is **DENIED**.

Defendant's Motion for Arrest of Judgment

Superior Court Criminal Rule 34 provides, in pertinent part:

> The court on motion of a defendant shall arrest judgment if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 7 days after verdict or finding of guilty, or after plea of guilty or nolo contendere, or within such further time as the court may fix during the 7-day period.[46]

Defendant's Motion for Arrest of Judgment was timely filed as it was received on September 24, 2013, seven days after the verdict in this case was entered. Defendant contends Detective Brian Price ("Price"), the chief investigating officer in Defendant's case, was

[45] *See* Instructions to the Jury, *State v. Sye Newton*, ID. No. 1211000093, D.I. 28, p. 8, n. 3 (Sept. 19, 2013) (A "deadly weapon" includes a knife of any sort other than an ordinary pocket knife carried in a closed position or any instrument which, under the circumstance in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury.)
[46] Super. Ct. Crim. R. 34.

terminated from his position as internal affairs investigator with the Department of Correction for violations pertaining to his duties and maintaining evidence.

Defendant argues that at trial he was unaware that the weapon he used had been stolen or destroyed. Defendant contends that if the weapon was presented at trial it would have been, "disclosed to the jury that the instrument was incapable of inflicting any serious physical injury, or even substantial risk of injury—let alone death." Defendant also argues that "it may turn out that other D.O.C. officials or employees may have relevant information pertaining to evidence or matters pertinent to trial and/or Price's involvement therein."

None of the grounds cited in Defendant's Motion for Arrest of Judgment address the proper grounds for a motion for arrest of judgment. Defendant's Motion is nevertheless without merit. Defendant was indicted on all counts of which he was found guilty. Further, this Court has jurisdiction over each count with which Defendant was charged, as, "the Superior Court shall have jurisdiction, original and concurrent, over all crimes, except where jurisdiction is exclusively vested in another court."[47] Therefore, Defendant's Motion for Arrest of Judgment is **DENIED**.

<u>Defendant's Motion to Correct Docket</u>

Defendant moves this Court to correct the docket, asserting two claims.[48] First, Defendant asserts the docket does not reflect that a Motion for Judgment of Acquittal was filed.[49] The Court notes that Defendant's Motion for Arrest of Judgment and accompanying declaration, and Defendant's Motion for Judgment of Acquittal were stapled together. Only the first page of the three documents was time stamped, and therefore, Defendant is correct, and his Motion for

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[47] 11 *Del. C.* § 2701

[48] There is a third matter that needs to be addressed with regard to the docket. See Defendant's Motion for Relief From Judgment or Order, *supra.*

[49] Def.'s Mot. to Correct Docket ¶ 1-2.

Judgment of Acquittal was not separately entered in the docket. Despite the fact the docket does not reflect Defendant's Motion, it was attached to papers docketed as being filed with this Court on September 24, 2013. This Court finds cause to correct the docket to reflect the filing of Defendant's Motion for Judgment of Acquittal. Therefore, Defendant's Motion to Correct the Docket to enter Defendant's Motion for Judgment of Acquittal is **GRANTED,** and the Prothonotary shall amend the docket to reflect the filing.

Defendant further contends the Motion for New Trial was mailed contemporaneously with his Motion for Judgment of Acquittal.[50] The docket reflects that the Motion for New Trial was filed on September 30, 2013. The docket reflects that the Motion for Judgment of Acquittal was filed on September 24, 2013.[51] Defendant claims "this is factually impossible."[52] Defendant suggests that a Rule 60 Motion for Relief from Judgment or Order he filed on September 30, 2013 may be the cause of the clerical error.[53]

Defendant is mistaken, however. The envelope which contained Defendant's Motion for Arrest of Judgment and Motion for Judgment of Acquittal was postmarked September 23, 2013. Defendant's Motion for New Trial was not sent in the same envelope, but rather another envelope, which was postmarked September 24, 2013. Defendant has cited no evidence that would suggest that the Prothonotary's Office received Defendant's Motion earlier than September 30, 2013, the date it was entered on the docket. Therefore, Defendant's Motion to Correct the Docket regarding when his Motion for New Trial was filed is **DENIED**.

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[50] *Id.* at ¶ 3.
[51] Superior Ct. Criminal Docket for *State v. Newton*, (Case No. 12110000093).
[52] Def.'s Mot. to Correct Docket ¶ 4
[53] *Id.* at ¶ 5.

Defendant's Motion for Rebuttal of Habitual Offender Designation

Defendant argues there was an insufficient hearing required by 11 *Del. C.* § 4215(b) to designate him as a habitual offender.[54] Defendant cites to a brief exchange between this Court and the State when the State mentioned that it believed Defendant qualified for harsher sentencing under Delaware's Habitual Offender Statute.[55] However, this Court has not received a motion from the State asking the Defendant be designated a habitual offender under 11 *Del. C.* § 4214. Therefore, Defendant's Motion for Rebuttal of Habitual Offender Designation is **MOOT**.

Defendant's Motion for Continuance

Defendant requests that this Court provide him additional time to file a response to the State's Motion to Declare Defendant a Habitual Offender. Defendant notes that his response was filed late because his motion was not sent out by James T. Vaughn's Administration for reasons still not fully explained. Defendant notes that "all envelopes, packages, etc. requiring money orders and for postage to be paid for from inmates accounts were halted." Defendant argues that the accounts being frozen prevented him from mailing out his response because he did not have stamps and was unable to purchase them without his account.

Defendant argues that "for the sake of judicial economy and in the interest of justice . . . sentencing in the present matter should be stayed pending receipt of plea colloquy, plea text & certified statements from Camden County's Public Defender's office." Defendant further argues that he did enter into felony pleas with Delaware but that these pleas are presently subject to collateral attack through a Motion for Postconviction Relief. Defendant further notes that he has

[54] Def.'s Mem. of Law in Supp. of Mot. for Rebuttal of Habitual Offender Designation ¶ 3.
[55] *Id.*

a pending appeal with regard to a separate felony conviction which will be decided by the Delaware Supreme Court.

Because the State has not yet moved to have Defendant sentenced as an Habitual Offender, Defendant's Motion for a Continuance is **MOOT**.

Defendant's Motion to Supplement Motion For a New Trial and Request for Conference

Defendant argues that he has discovered new evidence since he filed his initial Motionfor New Trial.

"To be successful on a new trial application, the defendant must establish (1) that the evidence is such as will probably change the result if a new trial is granted; (2) that it has been discovered since the trial and could not have been discovered before by the exercise of due diligence; and (3) that it is not merely cumulative or impeaching."[56]

Defendant claims that in *State v. Franklin Blunt III*, C.A. No. 1208016953, Mr. Blunt was charged with attempted assault on a correctional officer with what was described as a "shank." Defendant notes that charges were brought against Mr. Blunt on August 20, 2012, approximately two months before they were brought against Defendant. Defendant further notes that Mr. Blunt was housed in the same housing unit as Defendant. Defendant argues that he was told by Defendant Blunt that in *State v. Blunt*, Stanley Baynard ("Baynard"), an employee of the Internal Affairs Department, testified that he secures evidence to be used in possible criminal prosecutions, in evidence lockers are kept in his office, and that he has access to the evidence lockers.

Defendant argues that this new information proves that Price was not the only individual with access to evidence or with knowledge as to the whereabouts of the "shank" in his case.

[56] *Downes v. State*, 771 A.2d 289, 291 (Del. 2001).

Defendant further argues that a conference is necessary to determine at what point "D.A.G. Daniel McBride learned of missing evidence, if he knew or should have known of Stanley Baynard's access to all evidence, Mr. Baynard's possible involvement as to missing evidence, and why Mr. Baynard was not called to testify."

This is not new evidence which would warrant a new trial or require a hearing. Defendant does not claim Baynard had anything to do with the evidence in this case. The fact that Baynard, also an investigator, would store evidence of criminal investigations within locked evidence boxes in his office is not evidence of any fact regarding the evidence in this case. This purported "new evidence," even if true, would not contradict the testimony in Defendant's own trial that Investigator Price collected the shank and placed it in a locked evidence box in his office, and would have been the person with access. Therefore, Defendant's Motion to Supplement his initial Motion for New Trial and Request for Conference is **DENIED**.

Defendant's Motion to Compel Hearing for Legal Communications

Defendant contends that he is eligible for entry into an international prison transfer agreement, whereby he will serve out the remainder of his sentence in Germany. Defendant contends that he has received one correspondence from an individual with the German embassy, but has not provided any documentation to either the Court or the State. Defendant seeks a hearing so that the Court may determine whether he is eligible for international prison transfer, and so that he may contact individuals at the German consulate to arrange such transfer. As Defendant has not provided any evidence of his purported German citizenship, or any other documentation to support these contentions, this Motion to Compel a Hearing for Legal Communications is **DENIED**.

Defendant's Motion to Compel Hearing and/or Dismissal

Defendant requests a hearing, so that the State can explain its failure to respond to Defendant's outstanding motions by the August 26, 2016 deadline, as ordered by the Court on July 21, 2016. Alternatively, Defendant requests dismissal of the above-referenced criminal actions.

The Court finds no need for a hearing on this issue. The State filed its Response to Defendant's numerous motions on August 31, 2016, three business days after the deadline. The Court finds that any neglect on part of the State to timely file their Response did not prejudice Defendant in any way. Therefore, Defendant's Motion to Compel Hearing and/or Dismissal is **DENIED**.

The Court shall discuss Defendant's request for dismissal, *infra*.

Defendant's Motion to Amend Motion for Recusal

In Defendant's Motion to Amend his Motion for Recusal, Defendant notes that his prior Motion was based on the fact that this Court has a conflict of interest. Defendant argues that a conflict of interest exists because he has a pending Motion for Postconviction relief in a case that was decided when this Judge was Attorney General. Defendant further argues that there is "inordinate delay in ruling on motion for new trial, acquittal, arrest of judgment, Superior Ct. Civ. Rule 60 motions." Defendant argues that the delay in deciding these motions demonstrates that Defendant is not being afforded his Due Process rights.[57] Defendant contends that justice is being "unhinged" based on a failure to comply with procedural requirements.

[57] The case has been extremely protracted, and the file is voluminous. The Defendant filed multiple motions, some of which were ruled on intermittently, the majority of which are ruled on in this decision. The Defendant requested, and the Court ordered he be provided, transcripts. Several hearings were held. Multiple submissions were received from the State. Numerous items of correspondence were exchanged. The Defendant filed additional motions through September of 2016. His final response to the State's submissions was also received in September.

Both public policy and due process require a defendant be heard by a presiding judge who appears to be, and who actually is, impartial.[58] The Delaware Supreme Court has held "[t]he two-fold considerations of due process and the policy of appearance of impartiality have been codified in the Delaware Code of Judicial Conduct."[59]

When a claim for recusal by a party is brought because of a perceived personal bias, "no *per se* or automatic disqualification is required."[60] First, a judge must subjectively believe that she can proceed in the matter completely free of bias towards the party.[61] Next, even if the judge subjectively believes that she holds no bias, if there is an "appearance of bias sufficient to cause doubt as to the judge's impartiality" she must still recuse herself.[62] The burden of proof to show the objective appearance of bias is on the moving party.[63]

The issue that requires examination in this case is the objective prong of the *Los* test, because, subjectively, this Court harbors no personal bias towards the Defendant.

This Court has not been involved with the attorneys that prosecuted or defended Defendant's case. Furthermore, the mere fact that Defendant was prosecuted for his original conviction by the Attorney General's Office while this Judge was serving as Attorney General would not cause an objective person to view the situation as biased. There is only one agency in Delaware charged with the routine responsibility of prosecuting defendants charged with violations of our State's criminal laws. Therefore, the fact that the Defendant was prosecuted by that office for an unrelated charge, while this Court led that office, has no bearing on whether this Court can objectively remain unbiased towards him.

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[58] *Los v. Los*, 595 A.2d 381, 383 (Del. 1994).
[59] *Id.* at 384 (citing *Weber v. State*, 547 A.2d 948, 951-52 (Del. 1988).
[60] *Los*, 595 A.2d at 384.
[61] *Gattis v. State*, 955 A.2d 1276, 1280 (Del. Super. Ct. 2008).
[62] *Los*, 595 A.2d at 385 (citing *State v. Walberg*, 325 N.W.2d 687, 692 (1982)).
[63] *Wilson v. State*, 2010 WL 572114, at *3 (Del. Feb. 18, 2010).

Finally, this Court finds no merit in the argument that the alleged delay in deciding Defendant's numerous motions should prompt recusal by this Judge. Consequently, Defendant's Motion of Recusal is **DENIED**.

Defendant's Motion to Dismiss

Defendant argues that the weapon or photographs of the weapon in his case were "central to [the] charged offense of PDWDCF as well as inextricably intertwined to [the] assault charge." Defendant contends that the missing evidence was crucial to his theory of the case and negated elements of both offenses. Defendant further argues that the missing evidence was "not covered by secondary or substitute evidence – aside from Defendant's testimony."

For the reasons stated in the Court's analysis of Defendant's Motion for New Trial related to the missing evidence, Defendant's Motion to Dismiss is **DENIED**.

Defendant's Motion to Compel Show Cause Hearing

Defendant requests an "order show-cause hearing whereby [the] prothonotary, clerks, and aids to court may demonstrate why Defendant is being denied court dockets, not being sent court orders, and omitting filings from Defendant's Dock in pending actions." Specifically, Defendant argues that he has "not been put on notice of court appearances, been denied court dockets on numerous occasions, and now, motions mailed to Judge James T. Vaughn, Judge Diane Clarke-Streett, and Deputy Attorney General Ipek K. Medford have not been reported on docket ledger. Simply put, Defendant's Motion was not filed."

Defendant has not presented evidence to support his claims. All motions, upon correction of the docket as ordered herein, are included on the docket and addressed either previously or within this Opinion. Defendant does not point to any specific instance in which he has not received notice of court appearances, or decisions of this Court. If Defendant did not

receive specific items, he should inform the Court and the Court will send them. Therefore, a hearing on the matter is not warranted, and Defendant's Motion to Compel Show Cause Hearing is **DENIED**.

Defendant's Motion to Compel Assistance of Investigative Services

In the above-referenced motion, filed August 26, 2014, Defendant requests investigative services to assist Defendant in obtaining emails, documents, reports, internal memorandum, photographs, and statements from Brian Price and former Deputy Attorney General Daniel G. Simmons to try to establish the State was aware the evidence was missing sooner than they claim.

The decision to grant or deny funds for investigative services is within the sound discretion of the court.[64] An indigent defendant is not entitled to have investigative services provided by the State, unless he is able to show that such services are reasonably necessary for the preparation of an adequate defense.[65] The State is not required to provide funds for every investigative service requested by an indigent defendant.[66] Rather, the State is required to provide the "basic tools of an adequate defense or appeal" to those defendants who cannot afford to pay for them.[67]

In this case Defendant has not identified any reasonably necessary services of an investigator which would have been material to the defense of the above-referenced charges.

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[64] *Van Arsdall v. State*, 486 A.2d 1, 14 (Del. 1984), *rev'd on other grounds,* 524 A.2d 3 (1987) (citing *State v. Ayana,* 456 A.2d 1255, 1262 (Me. Supr. 1983)).
[65] *Id*. (citing *United States v. Davis,* 582 F.2d 947, 951 (5th Cir. 1978), *cert. denied,* 441 U.S. 962 (1979)).
[66] *Maxion v. State*, 686 A.2d 148, 151 (Del. 1996).
[67] *See Ake v. Oklahoma,* 470 U.S. 68, 77 (1985) (quoting *Britt v. North Carolina,* 404 U.S. 226, 227 (1971) ("[I]t has often reaffirmed that fundamental fairness entitles indigent defendants to 'an adequate opportunity to present their claims fairly within the adversary system....' "); *cf. Ross v. Moffitt,* 417 U.S. 600, 616 (1974) ("The duty of the State under our cases is not to duplicate the legal arsenal that may be privately retained by a criminal defendant in a continuing effort to reverse his conviction, but only to assure the indigent defendant an adequate opportunity to present his claims fairly in the context of the State's appellate process.").

The assistance of investigative services would produce no other evidence than what was adduced at trial. There is no realistic suggestion that the investigation sought would have been able to "counteract" the State's evidence. Under these circumstances, the Court finds that Defendant's conclusory allegations do not warrant the assistance of investigative services, at State expense. Therefore, Defendant's Motion to Compel Assistance of Investigative Services is **DENIED**.

Defendant's Motion to Compel Hearing on Proposal for Release-Dismissal Agreement

In Defendant's Motion, filed on October 5, 2015 Defendant agrees to release named individuals from civil liability in exchange for immediate release and dismissal of all criminal cases against him.

The Court is unaware of, and Defendant does not cite to any statutory or common law that would empower the Court to consider such an arrangement. Therefore, Defendant's Motion to Compel Hearing on Proposal for Release-Dismissal Agreement is **DENIED**.

Defendant's Motion for Relief from Judgment or Order

Defendant previously filed a Civil Rule 60 Motion which was ruled upon, found to be entirely without merit, and dismissed by the Superior Court, by Order dated October 14, 2013.[68] In that Order, the Superior Court stated:

> This is a criminal matter. It is governed by the Superior Court Rules of Criminal Procedure.[3] Only cases not provided for in the criminal rules are covered by the civil rules.[4] Criminal Rule 61 clearly covers the claims made by Defendant now. Defendant is attempting to collaterally attack his conviction and sentence, which is a proceeding controlled by Criminal Rule 61, not Civil Rule 60(d).[5] Civil Rule 60(d) is not a way around Criminal Rule 61 and its procedural bars.[69]

This Court notes that Defendant's current such Motion, filed June 8, 2015, was not docketed, and therefore, Orders the Prothonotary to correct the docket to reflect the filing.

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[68] *State v. Newton*, 2013 WL 7084798, at *1 (Del. Super. Oct. 14, 2013).
[69] *State v. Newton*, 2013 WL 7084798, at *1.

Further, the Court finds the Motion to be without merit for the same reasons outlined in the Court's Order dismissing Defendant's previous Civil Rule 60 Motion. Therefore, Defendant's Motion is **DENIED**.

IV. Conclusion

For the reasons stated above, Defendant's Motion for Judgment of Acquittal is **DENIED,** Defendant's Motion for a New Trial is **DENIED,** Defendant's Motion for Arrest of Judgment is **DENIED,** Defendant's Motion to Correct Docket is **GRANTED**, Defendant's Motion for Rebuttal of Habitual Offender Designation is **MOOT**, Defendant's Motion for Continuance is **MOOT**, Defendant's Motion to Supplement Motion for a New Trial and Request for Conference is **DENIED**, Defendant's Motion to Compel Hearing for Legal Communications is **DENIED**, Defendant's Motion Hearing and/or Dismissal is **DENIED**, Defendant's Motion to Amend Motion for Recusal is **DENIED**, Defendant's Motion to Dismiss is **DENIED**, Defendant's Motion to Compel Show Cause Hearing is **DENIED**, Defendant's Motion to Compel Assistance of Investigative Services is **DENIED**, Defendant's Motion to Compel Hearing is **DENIED**, and Defendant's Rule 60 Motion for Relief from Judgment or Order is **DENIED**.

IT IS SO ORDERED.

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M. Jane Brady
Superior Court Judge

MJB/aot
Original to Prothonotary