

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**STATE OF DELAWARE**

**v.**

**WILLIAM HUNTER<sup>1</sup>,**

**Defendant.**

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**ID No. 1104009274**

**OPINION**

**Submitted: June 26, 2017**  
**Decided: September 29, 2017**

*Upon Defendant’s Motion for Postconviction Relief, **DENIED.***

Annemarie H. Puit, Esquire, Deputy Attorney General, Department of Justice, Carvel State Building, 820 N. French Street, 7<sup>th</sup> Floor, Wilmington, Delaware 19801

William Hunter, *pro se*, James T. Vaughn Correctional Center, 1181 Paddock Road, Smyrna, Delaware 19977

**BRADY, J.**

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<sup>1</sup> The Supreme Court, on direct appeal, *sua sponte* assigned pseudonyms to Defendant and the victim to protect the identity of the victim. This Court has used the same pseudonyms assigned by the Supreme Court for the same reason.

## I. Facts<sup>2</sup> and Procedural History

Before the Court is a Motion for Postconviction Relief filed pursuant to Superior Court Criminal Rule 61 (“Rule 61”) by William Hunter (“Defendant”).

Defendant William Hunter began sexually abusing his daughter, Sally (“Victim”) in 2008, when she was 12 years old. The abuse included using a vibrator on her vagina; inserting sex toys and his fingers into her vagina and anus; and forcing her to masturbate him. The abuse continued regularly, several times a week, until April 2011. Victim disclosed the abuse to the Department of Family Services (“DFS”), when she was interviewed in April 2011. Based on Victim’s interview, New Castle Police Officers obtained and executed two search warrants for Defendant’s home. They found vibrators and sex toys. The sex toys contained Victim’s DNA, and in some cases, both Victim’s and Defendant’s DNA. Defendant was indicted on 25 counts of Sexual Abuse of a Child by a Person in a Position of Trust (“SACPPT”), one count of Continual Sexual Abuse of a Child, one count of Endangering the Welfare of a Child, and two counts of Violation of Privacy. Early in 2012, after a six-day trial the jury found Defendant guilty on all charges. In June 2012, before sentencing, the State advised Defendant and the trial court that SACPPT was not enacted until June 2010, and that counts 2-16 were related to a time period before June 2010. The State suggested that, since the elements of both crimes are the same, counts 2-16 should be amended by substituting the crime of second degree rape in placement of SACPPT. Ultimately, the State *nolle prossed* counts 2-16.

Defendant appealed his conviction to the Delaware Supreme Court and the Court affirmed the conviction on March 24, 2014.<sup>3</sup> On January 20, 2015, Defendant filed a *pro se*

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<sup>2</sup> The facts herein are taken from the factual recitation in the decision of the Supreme Court on direct appeal. *Hunter v. State*, 89 A.3d. 477, 2014 WL 1233122 (Del. March 24, 2014).

<sup>3</sup> *Hunter*, 89 A.3d.

Motion for Postconviction Relief. On April 30, 2015, Defendant filed a *pro se* Motion for Appointment of Counsel under Rule 61. This Court granted the Motion and referred the matter to the Office of Conflict Counsel, which appointed counsel in March 2016. On August 15, 2016, appointed counsel filed a Motion to Withdraw as Counsel and concluded, within an attached Memorandum of Law, that she believes no claims for relief existed.<sup>4</sup> Defendant filed a *pro se* Memorandum of Law in support of his Motion on October 13, 2016. Defendant's trial counsel, filed an affidavit on February 10, 2017. State filed a Response to Defendant's Memorandum of Law on April 13, 2017, and Defendant filed a reply to State's Response on May 3, 2017. On June 26, 2017, Defendant filed an additional submission clarifying one of the issues. This is the Court's decision.

## II. Discussion

### A. Procedural Bars

Before addressing the merits of Defendant's claims, the Court must apply the procedural bars set forth in Superior Court Criminal Rule 61(i) in effect at the time the motion was filed.<sup>5</sup> Pursuant to that version of Rule 61, this Court must reject a motion for postconviction relief if it is procedurally barred. That Rule provides that a motion is procedurally barred if the motion is untimely, repetitive, a procedural default exists, or the claim has been formerly adjudicated.<sup>6</sup> Rule 61(i)(1) provides that a motion for postconviction relief is time barred when it is filed more than one year after the conviction has become final or one year after a retroactively applied right has been newly recognized by the United States Supreme Court or by the Delaware Supreme

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<sup>4</sup> Mem. in Supp. of Mot. to Withdraw as Counsel, at 1, *State v. Hudson*, No. 54, (Aug. 15, 2016).

<sup>5</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>6</sup> See Super. Ct. Crim. R. 61(i)(1) – (4).

Court.<sup>7</sup> Rule 61(i)(2) provides that a motion is repetitive if the defendant has already filed a Motion for Postconviction Relief and that a claim is waived if the defendant has failed to raise it during a prior postconviction proceeding, unless “consideration of the claim is warranted in the interest of justice.”<sup>8</sup> Rule 61(i)(3) bars consideration of any claim “not asserted in the proceedings leading to the conviction” unless the petitioner can show “cause for relief from the procedural default” and “prejudice from violation of the movant’s rights.”<sup>9</sup> Rule 61(i)(4) provides that any claim that has been adjudicated “in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in the federal habeas corpus proceedings” is barred “unless reconsideration of the claim is warranted in the interest of justice.”<sup>10</sup>

The Court finds no procedural bars as to the claims of ineffective assistance of counsel. Procedural bars to substantive claims are addressed herein.

For ease of reference, the Court has used the designations of the claims established by the Defendant in the Memorandum of Law in support of his Rule 61 Motion for Postconviction Relief.

## B. Defendant’s Claims

### Ground I. Ineffective Assistance of Counsel

To prevail on claims of ineffective assistance of counsel, the defendant must meet the two-prong test set forth by the United States Supreme Court.<sup>11</sup> Defendant must establish that: (i) his counsel’s representation was deficient in that it fell below an objective standard of

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<sup>7</sup> Super. Ct. Crim. R. 61(i)(1).

<sup>8</sup> Super. Ct. Crim. R. 61(i)(2).

<sup>9</sup> Super. Ct. Crim. R. 61(i)(3).

<sup>10</sup> Super. Ct. Crim. R. 61(i)(4).

<sup>11</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

reasonableness; and (ii) that deficient performance prejudiced the defense.<sup>12</sup> When assessing counsel’s performance, a court must “indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.”<sup>13</sup> A defendant must overcome the presumption that the challenged action or lack of action by counsel might be considered “sound trial strategy.”<sup>14</sup> Additionally, defendant must show that the deficiencies in counsel’s performance were prejudicial to the defense,<sup>15</sup> in that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.<sup>16</sup>

Defendant claims trial counsel was ineffective because he did not call the Victim’s pediatrician to testify that the Victim’s hymen was intact and that she never disclosed any sexual abuse to the doctor.<sup>17</sup>

Trial counsel avers that Defendant never discussed having the pediatrician testify about the Victim’s hymen, but did discuss the fact that she never reported the abuse to the pediatrician.<sup>18</sup> Trial counsel further avers that he did not subpoena the pediatrician to testify that the Victim did not report abuse to him because the Defendant was the person who took her to the appointments and the State could potentially argue his presence would deter the Victim from reporting.<sup>19</sup>

The Court finds no ineffectiveness in the decision not to call the pediatrician. The Court gives credence to trial counsel’s assertion the Defendant never discussed the testimony regarding the condition of the Victim’s hymen. Further substantiating counsel’s contention is the fact that

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<sup>12</sup> *Id.* at 687.

<sup>13</sup> *Id.* at 688.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 692.

<sup>16</sup> *Id.* at 694.

<sup>17</sup> Def’s Mem of Law in Supp. of Rule 61 Mot for Postconviction Relief, at 3 (Oct. 26, 2016) (herein as “Def’s Mem.”).

<sup>18</sup> Aff. of Counsel, ¶ 4 (Feb. 10, 2017) (herein as “Aff.”).

<sup>19</sup> *Id.* ¶ 5.

the Sexual Assault Nurse Examiner (“SANE”) nurse was not asked about the issue, either. As to the fact that the Victim did not report the abuse to the doctor, trial counsel made an informed, strategic decision. There is a sound, proffered reason for that decision which has not been challenged by the Defendant.

Defendant also claims trial counsel was ineffective because he did not call an expert to discredit the SANE nurse.<sup>20</sup> Trial counsel notes that the SANE nurse did not provide any testimony to corroborate abuse –she noted no injuries or physical evidence that would support or refute the claims.<sup>21</sup> Further, trial counsel avers that he did not want to discredit the SANE nurse because her testimony was helpful in discrediting the Victim.<sup>22</sup>

The Court finds trial counsel was not ineffective because he did not call an expert to discredit the SANE nurse. He clearly made an informed, strategic decision not to discredit the SANE nurse. In addition, the SANE nurse’s testimony presented contradictory statements by the Victim and indicated no physical evidence of abuse and was actually helpful to the Defendant. Further, the Defendant has made no showing as to how he was prejudiced or what an expert would have proffered to establish prejudice.

Defendant next claims trial counsel was ineffective because he did not call an expert to challenge the DNA evidence, contending it was contaminated during the collection.<sup>23</sup>

Trial counsel fully explored the issue of contamination during his cross-examination of the DNA expert<sup>24</sup> offered by the State as well as of the police officer.<sup>25</sup> The issue of cross-contamination was fully and effectively argued before the jury.<sup>26</sup> The Court finds trial counsel

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<sup>20</sup> Def’s Mem, at 3.

<sup>21</sup> Aff., ¶ 6.

<sup>22</sup> *Id.*

<sup>23</sup> Def’s Mem, at 4.

<sup>24</sup> Trial Tr., 73-83 Feb. 6, 2012.

<sup>25</sup> Trial Tr., 51-60 Feb. 2, 2012.

<sup>26</sup> Def. Counsel Closing Arg., Trial Tr., 33-37 Feb. 7, 2012.

was not ineffective because he did not call an independent witness on this issue, but rather, presented the issue to the jury by effective cross-examination.

Defendant also claims trial counsel was ineffective because he did not call a computer expert to analyze the files on his computer or to challenge the dates assigned to the files by the State.<sup>27</sup> Further, Defendant claims a specialist was needed because his computer had a special operating system.<sup>28</sup> The videos on the computer were relevant, particularly, to the charges of Invasion of Privacy.

The State's expert witness testified that he recognized the computer was likely home-built and designed for file sharing.<sup>29</sup> He was unable to determine the dates on which the videos of the Victim being in the shower were taken, or if the videos, once created, were ever viewed.<sup>30</sup> The Victim did testify to the events surrounding the taping of the videos and gave some time estimates of when that occurred.<sup>31</sup> Trial counsel argued rigorously to keep the videos out, and to secure dismissal of the Invasion of Privacy charges.<sup>32</sup> The Court reserved decision, then denied that motion.

Defendant's claims regarding the videos do not challenge their existence, or what was depicted in them. Defendant does not specify what information an expert would have provided that would lead to evidence helpful to his defense. Further, he does not claim evidence exists that would establish when they were taken or if that time period would be outside the statute of limitations. The indictment alleges time frame and location. The jury was specifically instructed they must find all elements of the offenses occurred "at or about the date and places stated in the

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<sup>27</sup> Def's Mem, at 4.

<sup>28</sup> *Id.*

<sup>29</sup> Trial Tr., 18 Feb. 6, 2012.

<sup>30</sup> *Id.* at 26-30.

<sup>31</sup> *Id.*

<sup>32</sup> Prior to commencement of trial, defense counsel made a Motion to Dismiss two counts of Invasion of Privacy charges, *see* Trial Tr., 13 Feb. 2, 2012.

indictment.”<sup>33</sup> Defendant was charged with class G felony of Violation of Privacy for which the statute of limitations was 5 years.<sup>34</sup> The dates were contested as to when video-recordings were made of the Victim in the shower. The Victim testified the videos were made when she was 12 or 13 years old. Some portion of that period was within the statute of limitations. The Court, therefore, allowed the charges of Violation of Privacy to go forward.

The Court finds the Defendant’s claims are vague and conclusory, without specification of how the Defendant was prejudiced, if at all, by the absence of his own computer expert. Nor does the Defendant allege the time frame was beyond the statute of limitations.

Defendant next claims trial counsel was ineffective because he did not subpoena or interview witnesses that would discredit the Victim.<sup>35</sup> Trial counsel states in his affidavit that he did not recall Defendant asking him to subpoena additional witnesses.<sup>36</sup> While Defendant claims he provided the names of several potential witnesses to trial counsel, he does not specify who they are and what they would have said.<sup>37</sup> There is no information provided by the Defendant as to how he was prejudiced, if at all, by the failure to call these unidentified witnesses.

Defendant next claims trial counsel was ineffective for not filing a request for a Bill of Particulars.<sup>38</sup> Defendant claims he could not focus on each charge to defend himself because he had to focus on generality.<sup>39</sup> He claims the multiple counts, without specificity in the language of the Indictment, also prevented the jury from considering each charge separately.<sup>40</sup>

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<sup>33</sup> Jury Inst. on Violation of Privacy.

<sup>34</sup> 11 *Del.C.* §205(b)(1).

<sup>35</sup> Def’s Mem, at 5.

<sup>36</sup> Aff., ¶ 7.

<sup>37</sup> Def’s Mem, at 5.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 5-6.

<sup>40</sup> *Id.* at 6.



The State chose to charge one act of SACPPT per month over the time period the Victim contended the acts occurred. Victim testified the abusive events occurred several times per week during that same time period.<sup>41</sup> The nature of the abuse included using a vibrator on her vagina, inserting sex toys or his fingers into her vagina or anus, and forcing her to touch his genitals. The State established, through Victim's testimony, multiple acts in each of the time periods charged. Further, trial counsel was provided the police reports, the videotaped statements of the Victim and the forensic reports.<sup>42</sup> Significant, specific information was known to trial counsel and the Defendant prior to trial. Trial counsel avers he and Defendant were aware of the allegations, the evidence that supported the allegations and the frequency with which the abuse was alleged to have occurred.<sup>43</sup>

The Court finds the Defendant has failed to establish what deficiencies, if any, were in the information known to him before trial and how they may have prejudiced him. Further, while Defendant claims the Indictment was defective because it was vague and did not properly or sufficiently specify the charges against him, the Court finds the Indictment legally sufficient. Defendant complains that the specification of location and method of penetration were omitted in each count of SACPPT, which resulted in his inability to form a defense as to each particular count.<sup>44</sup> An example of the language of a count of SACPPT is as follows:

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<sup>41</sup> Trial Tr. 9, 37, Feb. 3, 2012.

<sup>42</sup> State's Resp. to Def's Mot. for Postconviction of Relief, at 12, (Apr. 17, 2017) (herein as "State's Resp.") (citing Aff., ¶ 4).

<sup>43</sup> Aff., ¶ 8.

<sup>44</sup> Def's Mem., at 6.

COUNT II a felony, SEXUAL ABUSE OF A CHILD BY A PERSON IN POSITION OF TRUST, AUTHORITY OR SUPERVISION FIRST DEGREE, in violation of Title 11, Section 778 of the Delaware Code.

WILLIAM HUNTER,<sup>45</sup> on or between the 1<sup>st</sup> day of April, and the 30<sup>th</sup> day April, 2009,<sup>46</sup> in the County of New Castle, State of Delaware, did intentionally engage in sexual penetration with [Victim]<sup>47</sup>, a child who has not yet reached that child's own 16<sup>th</sup> birthday and the defendant stands in a position of trust, authority or supervision over the child.

Each count properly alleges the elements of the offense charged and specifies a time and location at or about which the offense is alleged to have occurred. Delaware courts have consistently viewed an indictment as serving two purposes: “to put the accused on full notice of what he is called upon to defend, and to effectively preclude subsequent prosecution for the same offense.”<sup>48</sup> The language of the Indictment clearly put Defendant on notice of the charges against him. The courts of this State have held that “an indictment for a statutory offense is generally held sufficient if the offense is charged in substantially the words of the statute or equivalent language.”<sup>49</sup> Thus, the lack of specificity as to each particular, alleged act of abuse does not nullify the Indictment.

The Court has considered each claim of ineffective assistance. None has shown counsel to have gone below an objective standard of reasonableness. Although not insurmountable, the *Strickland* standard is highly demanding and leads to a “strong presumption that the representation was professionally reasonable.”<sup>50</sup> Furthermore, when setting forth a claim of ineffective assistance of counsel, a defendant must make and substantiate concrete allegations of

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<sup>45</sup> Defendant's name was changed to reflect the pseudonym used by the Delaware Supreme Court, also adopted by this Court.

<sup>46</sup> The language of each count of SACPPT is identical, except for the dates reflecting each month starting when the alleged penetration began.

<sup>47</sup> Victim's name is omitted here in effort to protect her identity.

<sup>48</sup> *Malloy v. State*, 462 A.2d 1088, 1092 (1983) (citation omitted).

<sup>49</sup> *State v. Husser*, 1990 WL 161226, at \*2 (Del. Super. Ct. Oct. 12, 1990) (citing *State v. DiMaio*, 185 A.2d 269, 271 (Del. Super. Ct. Jul. 27, 1962)).

<sup>50</sup> *Flamer v. State*, 585 A.2d 736, 754 (Del. 1990) (citing *Kimmelman v. Morrison*, 106 S.Ct. 2574, at 2586 (1986)).

actual prejudice or risk summary dismissal.<sup>51</sup> Defendant has not established his attorney's conduct fell below the applicable standard, nor has he shown how he was prejudiced by any of the alleged deficiencies.

### Ground II. Insufficient Evidence

Defendant claims there was insufficient evidence presented at trial to support a conviction on the charges of Invasion of Privacy.<sup>52</sup> Specifically, Defendant contends there was no evidence presented to support the element that the acts were intended to produce sexual gratification.<sup>53</sup>

Defendant correctly cites to the jury instructions on the charges of Invasion of Privacy, which informed the jury they needed to find the element of intent to produce sexual gratification. Further, Defendant properly cites the standard to determine the sufficiency of evidence: "whether any rational trier of fact, viewing the evidence in light most favorable to the State, could find the defendant guilty beyond a reasonable doubt."<sup>54</sup> However, the issue of insufficiency of evidence with regard to the Invasion of Privacy charge is procedurally barred under Rule 61(i)(4), as it was previously adjudicated (and denied) when trial counsel made a motion for judgment of acquittal.

Even if procedural bars do not apply to this issue, Defendant's claim nevertheless lacks merit because the jury had sufficient evidence, under the circumstances, to infer the intent

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<sup>51</sup> *State v. Coleman*, 2003 WL 22092724, at \*2 (Del. Super. Feb. 19, 2003) (citing *Strickland*, 466 U.S. at 689 (1984) (citation omitted).

<sup>52</sup> Def's Mem., at 8.

<sup>53</sup> 11 *Del C.* §1335(a) A person is guilty of violation of privacy when, except as authorized by law, the person:  
(6) Tape records, photographs, films, videotapes or otherwise reproduces the image of another person who is getting dressed or undressed or has that person's genitals, buttocks or her breasts exposed, without consent, in any place where persons normally disrobe... where there is a reasonable expectation of privacy. This paragraph shall not apply to any acts done by a parent or guardian inside of that person's dwelling..., unless the acts done by the parent or guardian are intended to produce sexual gratification for any person in which case this paragraph shall apply."

<sup>54</sup> Def's Mem., at 8.

necessary to convict of the Invasion of Privacy charges. Defendant was alleged to have engaged in conduct in which his daughter did not wish to participate, and yet she did so on many, many occasions. The conduct was of an extremely intimate and sexual nature, and coercion, if not physical force or threat, was a component. Exposing the Victim to videotaping while in the shower, much like watching his daughter use the sex toys he provided, can easily be determined by the jury to be with the intent of gratifying him sexually.

Accordingly, Defendant's Motion is denied as to this claim.

### Ground III. Brady Violation

Defendant next claims that the State violated its obligation under *Brady*<sup>55</sup> to provide him with information that the Victim's hymen was intact and that she denied the abuse occurred, and did not provide Defendant's, his co-defendant's or the Victim's statements to the child protection agency.<sup>56</sup>

This claim was not raised at trial and is procedurally barred under Rule 61(i)(3).<sup>57</sup> Defendant must therefore show prejudice from violation of his rights and cause for relief.<sup>58</sup>

Defendant has failed to present grounds to grant relief. He has not provided any documentation regarding the condition of the Victim's hymen or that, if it were intact, the abuse she related could not have occurred. DNA evidence established the Victim's body was in contact with multiple items, introduced at trial, and alleged to have been used to perpetrate the abuse. Further, the fact that the Victim did not report the incidents of abuse for a substantial period, even when provided the opportunity to do so, was in the police reports and information

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<sup>55</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

<sup>56</sup> Def's Mem., at 9.

<sup>57</sup> Super. Ct. Crim. R. 61(i)(3).

<sup>58</sup> *Id.*

provided to the Defendant by the State before trial. Additionally, Defendant has not alleged how, if at all, he was prejudiced by failure to provide the statements.

The Motion is denied as to this claim.

#### Ground IV. Defective Indictment

Defendant claims the Indictment failed to state, with sufficient specificity, the crimes with which he was charged.<sup>59</sup> Defendant was charged with one count of SACPPT each month an act of penetration was alleged to have occurred. Defendant argues the Indictment failed to allege sufficient facts to differentiate each count, i.e. it did not specify which acts correlated to which count, and the location and types of penetration were also not specifically alleged as to each count.<sup>60</sup>

The Court finds Defendant's claim is both procedurally barred, and without merit. Under Superior Court Criminal Rules 12(b)(2) and 12(f), a defense or objection based on a defect in an indictment is waived unless it is raised before trial.<sup>61</sup> Additionally, this claim is procedurally barred under Rule 61(i)(3) as it was not raised at trial.<sup>62</sup> Even if Defendant's claim is not waived or barred, the Court is satisfied that the Indictment for each count of SACPPT was legally sufficient containing a plain, concise, and definite written statement of essential facts constituting the offense charged, in accordance to Superior Court Criminal Rule 7(c).<sup>63</sup> The Indictment matched the statements disclosing the time period in which the Victim contended Defendant conducted the acts of penetration, and the alleged facts were presented and known to Defendant before trial. Defendant cites *Luttrell v. State*, in which the Delaware Supreme Court held the trial court's denial

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<sup>59</sup> Def's Mem., at 11.

<sup>60</sup> *Id.*

<sup>61</sup> *Stewart v. State*, 829 A.2d 936, 2003 WL 22015766, \*1 (Del. July 29, 2003) (TABLE).

<sup>62</sup> Super. Ct. Crim. R. 61(i)(3).

<sup>63</sup> Super. Ct. Crim. R. 7(c), states in relevant parts: "The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charges. ... Allegations made in one count may be incorporated by reference in another count."

of the defendant's motion for bill of particulars resulted in the defendant's inability to adequately present a defense.<sup>64</sup> In *Luttrell*, the indictment included multiple counts of the same general offense, Unlawful Sexual Conduct, with identical language and contained no substantial facts to differentiate each count.<sup>65</sup> The indictment in *Luttrell* also listed dates of the alleged crimes different from the dates stated by the victim.<sup>66</sup> In the present case, the Indictment reflects Defendant's charge of one count of SACPPT per month during the period the alleged penetration occurred. The time period applicable to the series of charges of SACPPT matches the Victim's statements, and was known to Defendant prior to trial. Further, the trial court in this case did not deny a request for a bill of particulars.<sup>67</sup> Thus, the Court finds no merit in Defendant's claim of defective indictment.

Defendant also contends that the Jury Instructions were deficient by not specifying which factual allegations corresponded to which count of offense.<sup>68</sup> This claim, similar to above, is also procedurally barred under Rule 61(i)(3) as it was not raised during trial, unless Defendant can show cause for relief and that he was prejudiced by the violation of his rights.<sup>69</sup> Defendant made a conclusive statement alleging deficiency in the Jury Instructions without substantiating his claim, or demonstrating how explaining to the jury regarding which factual allegation corresponded with which count would, if at all, result in a different verdict.<sup>70</sup> Further, had Defendant raised these issues during trial, the Court would have denied his claims as the Court finds the Indictment and Jury Instructions legally sufficient.

Consequently, Defendant's Motion is denied as to this claim.

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<sup>64</sup> *Luttrell*, 97 A.3d 70 (Del. July 28, 2014).

<sup>65</sup> *Id.* \*73.

<sup>66</sup> *Id.*

<sup>67</sup> See pages 8-9 for a discussion of trial counsel's failure to file a Bill of Particulars.

<sup>68</sup> Def's Mem., at 12.

<sup>69</sup> Super. Ct. Crim. R. 61(i)(3).

<sup>70</sup> Def's Mem., at 12.

### Grounds V. Search Warrant Deficiencies

Defendant next claims that the second search warrant in the case is deficient.<sup>71</sup> There were two search warrants. The first, for a white, battery operated vibrator, was executed at the Defendant's residence, at which time multiple items of relevance to the investigation were observed and a second search warrant was secured. The second warrant, which Defendant claims was overbroad and a general warrant, sought to seize sex toys, bedding, and specific electronic equipment, including cameras and computers. At the time of the execution of the first warrant, officers observed additional sex toys, cameras, computers and bedding in plain view.<sup>72</sup> A resident of the home, Defendant's wife, confirmed to the police that Defendant performed masturbation with the Victim and that the Victim would lay on the bedding.<sup>73</sup> Given the proximity of some of the electronics to the location where sexual activity took place, police thought there might be video evidence and sought a second warrant for the additional items.

This claim is procedurally barred under Rule 61(i)(3) as Defendant did not challenge the search at trial.<sup>74</sup> Trial counsel avers that he did not believe there were grounds to do so.<sup>75</sup>

The Court has reviewed both warrants. The Court finds there is sufficient probable cause in each warrant to search for the items taken by the police pursuant to the warrant. Had the matter been previously raised by trial counsel, a motion to suppress would not have prevailed.

Defendant can make no showing that his rights were violated, that he suffered any prejudice or that there is any cause for relief. The Motion is denied as to this claim.

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<sup>71</sup> *Id.* at 13.

<sup>72</sup> Search Warrant App. and Aff., at 3 (Apr. 12, 2011).

<sup>73</sup> *Id.* at 4.

<sup>74</sup> Super. Ct. Crim. R. 61(i)(3).

<sup>75</sup> Aff., ¶ 11.

### **III. Conclusion**

For the foregoing reasons, Defendant's Motion for Postconviction Relief is **DENIED**.

**IT IS SO ORDERED.**

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**M. Jane Brady**  
Superior Court Judge