GRAVES 01-04

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE,	:	DEF. ID# 93S00177DI
v.	:	CRA. Nos: 93-01-0052; 0054; 0053, 0056-R1
WILLIAM WEEDON, JR.,	:	
Defendant.	:	

MOTION FOR POSTCONVICTION RELIEF - Denied

Date Decided: March 6, 2001

James Apostolico, Deputy Attorney General, Department of Justice, Carvel State Office Building, 820 North French Street, Wilmington, Delaware 19801, Attorney for the State.

Charles M. Oberly, Jr., Esquire, Oberly & Jennings, P.A., 800 Delaware Avenue, Suite 901, P.O. Box 2054, Wilmington, Delaware 19899, Attorney for Defendant.

Graves, J.

Pending before the Court is the motion of William Weedon, Jr. ("Billy" or "defendant") seeking a new trial pursuant to Superior Court Criminal Rule 61 ("Rule 61"). This is the Court's decision denying that application.

PROCEDURAL HISTORY

Defendant was charged in connection with an attack on Ronald E. Ward, Sr. ("Ward"). At trial, defendant's wife, Jeanine Weedon ("Mrs. Weedon"), testified that her husband told her he had assaulted Ward. Michael Falahee ("Falahee") testified at trial that defendant had told him that he (the defendant) took care of Ward. Defendant had objected to the admissibility of Mrs. Weedon's testimony on the ground of marital privilege. The Court admitted the testimony on alternative grounds, one being that defendant waived the marital privilege because defendant disclosed to others the information he told his wife.

In May, 1993, a jury found the defendant guilty of attempted murder in the first degree, burglary in the first degree, possession of a deadly weapon during the commission of a felony and conspiracy in the first degree. Defendant received a twenty-two (22) year sentence from the trial judge. The Delaware Supreme Court affirmed the conviction, and in particular, affirmed the determination that defendant waived the martial privilege by communicating to others besides his wife that he perpetrated the assault on Ward. Weedon v. State, Del. Supr., 647 A.2d 1078 (1994).

Thereafter, defendant filed the pending Rule 61 motion wherein he sought relief on several grounds.[1] He argues that Falahee recanted his trial testimony that the defendant told him he had assaulted Ward and since there was no publication to others, Mrs. Weedon's testimony as to

[1]The defendant has abandoned two grounds of relief: that a police officer's photographic identification of the defendant was not unduly suggestive and that trial counsel was ineffective. Weedon v. State, Del. Supr., 750 A.2d 521, 527 n. 4 (2000).

defendant's admission to attacking Ward was inadmissible. In support thereof, defendant submitted an affidavit as well as a videotape of Falahee wherein he recanted his trial testimony. Defendant also submitted affidavits of others whom Mrs. Weedon said defendant told about the assault. Defendant further submitted a September, 1997 affidavit of Mrs. Weedon. This affidavit did not contain a recantation by Mrs. Weedon. Finally, defendant sought an evidentiary hearing with regard to Falahee's recantation.

In his decision on the motion, Judge William Swain Lee found that Falahee's trial testimony was credible and the recantation was false; he determined there was no need for an evidentiary hearing on the recantation; he ruled that the testimony of Mrs. Weedon that defendant told her he had assaulted Ward was admissible; and he denied the Rule 61 motion. State v. Weedon, Del. Super., Cr.A. Nos. 93-01-0052; 0054; 0053; 0056-R1, Lee, J. (May 18, 1999).

Defendant appealed. In Weedon v. State, Del. Supr., 750 A.2d 521 (2000) (hereinafter referred to as "Weedon II"), the Supreme Court reviewed the issues of Falahee's recantation, the admissibility of Mrs. Weedon's testimony, and the need for an evidentiary hearing. The Supreme Court noted that the need for an evidentiary hearing as to recantation was usually a determination for the trial court; thus, it reviewed the decision employing an abuse of discretion standard. But, in an unusual turn of events, the Supreme Court accepted an affidavit from the defendant's wife, filed with the Supreme Court the day before oral argument. In that affidavit, Mrs. Weedon recanted for the first time. This recantation obviously raised concerns with the Supreme Court. The Court ruled that the recantations of Falahee and Mrs. Weedon, along with the affidavits of third parties who refuted Mrs. Weedon's claim of waiver, mandated an evidentiary hearing for evaluating the recantation claim. Weedon II, 750 A.2d at 529.

Since Judge Lee has retired, this case was assigned to me. The evidentiary hearing took place on August 28, 2000. Switching horses in midstream has required that what has taken place from the trial forward be studied. This was done both before and after the evidentiary hearing. The parties filed their final briefs on February 13, 2001.

FACTUAL BACKGROUND

The following is the factual background taken from Weedon II.

Defendant and John M. Smith were arrested in November, 1992 in connection with the severe beating of Ward during the early morning hours of October 10, 1992, at his home in Lewes, Delaware. Ward could not identify his attackers. The investigation, however, focused on the defendant after Mrs. Weedon contacted the Lewes police on November 4, 1992, and claimed that soon after Ward's attack, the defendant had confessed to her that he was responsible.

Mrs. Weedon gave the following account. On October 9, 1992, one day before the attack on Ward, it was reported that Ward had sexually molested the Weedons' ten-year-old son Billy in 1991.[2] Upon learning this, the defendant shouted, "I'll go down there and kill [Ward]! I'll kill him!" Mrs. Weedon, equally angered, responded "You should." The defendant warned Mrs. Weedon that if she told anybody of his intentions he "would take care of [her]." The next day, between 10:00 and 10:30 a.m., the defendant returned to the Weedon home and told Mrs. Weedon that he and a friend had gone to Ward's house and beaten him with two baseball bats. The defendant also told his wife that they had left Ward and his house in a bloody state and were unsure whether Ward was still alive. The defendant stated that "he hoped he could trust [Mrs. Weedon] being his wife not to tell anyone."

[2]Ward was tried and found not guilty by a jury as to these allegations.

Soon after the investigation focused on the defendant, evidence surfaced that placed him in the area of the crime during the early morning hours of October 10, 1992. On that date, at approximately 2:17 a.m., Lewes Police Officer Gilbert Clampitt ("Clampitt") stopped a blue Chevrolet Nova for a speeding violation. The driver and the passenger identified themselves as Smith and the defendant, respectively. Clampitt noticed two baseball bats inside the vehicle, one of which was cracked, and made inquiry. The defendant informed Clampitt that the two bats were inadvertently left in the compartment of the vehicle after their earlier use at his son's baseball practice. Clampitt ticketed Smith for speeding but allowed the two to proceed.

In early 1993, the defendant and Smith were indicted and jointly tried before a jury. Before Mrs. Weedon's account of her alleged conversation with the defendant was presented to the jury, the defendant's attorney objected to it, claiming that the marital privilege protected the communication. The Court conducted a hearing to determine if the marital privilege applied to Mrs. Weedon's testimony. The State argued that the privilege was waived due to the defendant's alleged publication of the communication to third parties. In support of this assertion, the State presented, at an evidentiary hearing outside the presence of the jury, testimony by Mrs. Weedon that the defendant had told "the whole neighborhood" what he had done to Ward. The State also presented testimony by Falahee, a former neighbor of the Weedons, who testified that the defendant had admitted to him that he "took care of [Ward]" for molesting his son. The Court accepted these accounts as truthful. Because the Court found that the defendant disclosed the statements at issue to third parties, it held that his statement to Mrs. Weedon was not protected by the marital privilege. Mrs. Weedon was thus permitted to testify as to the defendant's alleged admissions.

At trial, Smith presented an alibi defense. He testified that he had borrowed the defendant's Nova and that he and a friend, Bobby Sherrill ("Sherrill"), went fishing in Lewes late in the evening of October 9, 1992, and were there until the early morning hours of October 10. On the way out of town, Smith acknowledged that Clampitt stopped him. Smith testified, however, that it was Sherrill who was in the car, not Weedon. Sherrill died the week after the attack on Ward and, therefore, was unable to testify. In rebuttal, the State produced two witnesses who testified that Sherrill was not with Smith during the pertinent time period on October 9 and 10, 1992.

Although the defendant did not testify at trial, he also presented an alibi defense through witness testimony that provided the following time frame for his whereabouts and activities on October 9 and 10, 1992. The defendant went to his mother's birthday party from early evening to about 9:30 or 9:45 p.m. He then went to a bar with friends from approximately 9:45 p.m. to around 1:30 or 1:45 a.m. on October 10, 1992. Thereafter, he went to a friend's house to play cards with a group of people and stayed there until mid-morning.

The defendant also attempted to discredit the testimony of his wife and Falahee. The defendant's counsel elicited testimony showing that the Weedon's thirteen-year marriage was volatile and acrimonious, that Mrs. Weedon was trying to leave the defendant at the time she contacted police in November 1992, and that Mrs. Weedon and Falahee were engaged in an adulterous relationship at the time of trial.

The jury found both men guilty. On appeal, the Supreme Court reversed Smith's conviction, holding that the Superior Court erred in admitting against him portions of the defendant's alleged admissions. Smith v. State, Del. Supr., 645 A.2d 1083 (1994). Subsequently, Smith admitted his involvement, as well as the defendant's, when he entered a guilty plea to assault in the first degree and possession of a deadly weapon during the commission of a felony.

APPLICABLE LAW

New trial applications based on recantations are viewed with suspicion. Blankenship v. State, Del. Supr., 447 A.2d 428, 433 (1982); Robinson v. State, Del. Supr., No. 149, 1995, Holland, J. (January 29, 1996) (ORDER). There is no substantial disagreement as to the applicable law and it is summarized by the Supreme Court in Weedon II at page 528. In discussing Blankenship v. State, 447 A.2d at 433, the Supreme Court stated:

> In evaluating Falahee's testimony, the Superior Court noted that recantations are evaluated under the test announced in *Larrison v. United States*, 7th Cir., 24 F.2d 82 (1928), which this Court adopted in *Blankenship*. Under that test, a new trial should be granted when:
>
> (a) The Court is reasonably well satisfied that the testimony given by a material witness is false.
>
> (b) That without it the jury might have reached a different conclusion.
>
> (c) That the party seeking the new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial.

These are independent prongs, and if the first prong is not met, then the Court can deny relief solely on that basis and need not proceed to the second and third prongs. Montes v. State, Del. Supr., 520 A.2d 1045 (1987). Based upon the language of the decision ordering the remand, I shall address each prong.[3]

[3]As noted earlier, after the conviction of Mr. Weedon's co-defendant was overturned on direct appeal, Smith subsequently pled guilty and admitted that he and the defendant attacked Mr. Ward. The State argues that this "validates" the jury verdict. That may be so, but that is not the issue here. The issue is how the conviction was obtained. Was the search for the truth tainted by perjury which impacted the trial?

The simplest way to review the testimony is in the order in which the witnesses were called and the issues covered. Falahee was not available to testify because he died, apparently of a drug overdose, between the time he provided his affidavit and videotaped recantation and the time of the hearing.

Joe Ellen Trader - Mrs. Trader was called by the defense. Mrs. Trader has known the defendant for twenty-five (25) years. Mrs. Trader supplied an affidavit earlier in the first round of this postconviction procedure. That affidavit was reviewed and she affirmed its contents. Mrs. Trader denied any publication by the defendant to her of anything involving the Ward "beating".

Mrs. Trader is married to James Trader. Both Mr. and Mrs. Trader are good friends of the defendant. Mrs. Trader communicates regularly (every couple of months) by telephone with the defendant. Mrs. Trader is desirous of helping the defendant get out of jail. Mrs. Trader reports that Michelle Falahee, sister of Michael Falahee, is dead. Mrs. Weedon reported Michelle was also one of the persons with whom the defendant allegedly communicated as to Ward's beating.

Patricia Woodland - Ms. Woodland likewise executed an affidavit in 1997 and she affirmed its contents that the defendant did not discuss this case with her. Ms. Woodland reported the only thing she knew was what the defendant's wife, Jeanine Weedon, told her. Ms. Woodland lives behind the defendant's mother's house in Baltimore. She knows the defendant and his family. Ms. Woodland testified that Jeanine Weedon hated the defendant and wanted to be rid of him. Ms. Woodland testified that she had a telephone conversation with the prosecutor, Mr. Adkins. Ms. Woodland reports that Mr. Adkins never asked her to lie to put away Billy. Ms. Woodland testified

she told him she did not know anything. When asked if she was afraid of Billy back then, she replied, "No, I wasn't really afraid of him." In her affidavit, Ms. Woodland said she told Mr. Adkins that "she wanted to stay the hell out of it."

Sharon Carr - Ms. Carr is Jeanine Weedon's sister. Ms. Carr resides in Rehoboth Beach, Delaware. She reports her only knowledge about the incident is what Mrs. Weedon told her. Ms. Carr was at a meeting with Mrs. Weedon at the Attorney General's Office. Ms. Carr reports that Mr. Adkins never asked anybody to lie. As to the marriage, Ms. Carr reports it was "toxic". She acknowledges Mrs. Weedon had reported physical and verbal abuse. Ms. Carr cares for two of Billy and Jeanine Weedon's children, and therefore, has regular contact with the Weedon family. Since 1993, Ms. Carr regularly takes them to visit their father in prison. When Ms. Carr takes the children to the prison, she also meets with Billy.

Jeanine Weedon - Jeanine Weedon is a pivotal witness. She is the defendant's wife and it was her affidavit presented to the Supreme Court which created its apparent concerns of an unfair verdict based on perjury.

Mrs. Weedon testified to many assaults and arrests arising from an abusive relationship with the defendant. Mrs. Weedon stated she asked Michael Falahee to lie for her. Mrs. Weedon has no idea if Michael and Billy talked about the incident. Mrs. Weedon said her earlier testimony, about Billy telling others about the incident, was untrue.

Mrs. Weedon has not divorced the defendant. Mrs. Weedon acknowledged also that she filed for divorce on earlier occasions, but never went through with it.

Mrs. Weedon acknowledged her children "want their daddy out of jail." Mrs. Weedon said she wrote the letter/affidavit in her sister's kitchen, with her sister and her children present. This was right after the Christmas (1999) holidays, when all the children saw their father. The children

reported to their mother that Billy wanted to celebrate the holidays with her. Mrs. Weedon spoke to him directly by phone. Mrs. Weedon was upset and felt guilty.

Mrs. Weedon was asked by the State about a meeting she had with the prosecutor, Mr. Apostolico, and Detective Jerry Christian. This meeting is alleged to have taken place in May, 1998, about two years before her testimony before me. Mrs. Weedon said she did not remember this meeting. After hearing questions about the details of the meeting she still could not recall it. Mrs. Weedon acknowledged that while she is recanting now, she did not do so in earlier communications.

Mrs. Weedon acknowledged that the defendant was "pretty violent and you just didn't know what he would do." When asked if others in the neighborhood feared him, she replied, "in a sense," and that he intimidated others. Mrs. Weedon said she had been abused and she was afraid of him. The abusive relationship resulted in approximately eight separations.

In 1991, the defendant was arrested for kidnaping and related charges with his wife being the victim. Mrs. Weedon testified that she told Mr. Adkins that the kidnaping incident was all a lie; i.e., she recanted. Furthermore, as to that incident, she said the defendant threatened her and was standing next to her when the telephone conversation with Mr. Adkins occurred. At a subsequent meeting with Mr. Adkins, when her husband was not present, Mrs. Weedon testified the threats continued and he drove her to Georgetown when she met with Mr. Adkins.

Mrs. Weedon testified that she did not know any specific matters as to defendant's legal battles, nor did anyone "solicit" the letter she wrote in her sister's kitchen, but she was aware that something was going on and such a letter by her would be relevant.

James Adkins - Mr. Adkins was the prosecutor who handled the case against defendant. Mr. Adkins had several important conversations with Mrs. Weedon and other witnesses. Mr. Adkins recalled that Mrs. Weedon told him from the beginning of his involvement that the defendant had

bragged about the incident in their neighborhood. When publication became an issue, he inquired as to specific names. Mrs. Weedon gave him names. He recalls Falahee as well as Ms. Woodland and Mrs. Trader based on their affidavits..

Mr. Adkins did not think he had talked to the other witnesses prior to trial. Mr. Adkins testified the need to talk to them became important when publication became an issue. Mr. Adkins spoke to Ms. Woodland by telephone. His recollection of the telephone conversation differs substantially from Ms. Woodland's. He said Ms. Woodland's acknowledged comment, "You can leave me the hell out of it", was because she had knowledge of the case by way of the defendant, but refused to become involved because she was scared. Ms. Woodland lived in defendant's neighborhood and had children and she was not going to get involved.

Detective Gerald Christian - Detective Christian is a retired New Castle County Police Officer who has been with the Attorney General's Office for three years. Detective Christian's testimony focused on the May, 1998, meeting that Mrs. Weedon did not recall. Detective Christian had his notes. Detective Christian testified that at the meeting, Mrs. Weedon reported the following: that the September, 1997 affidavit was correct; the defendant asked her to sign it; she gave names of persons the defendant told; that neither she nor Falahee had lied at the trial; that the defendant and his family were in touch with her on numerous occasions to get him out of jail; and that she was upset and scared that his lawyers had tracked her down and wanted to put words in her mouth.

DISCUSSION

Is the Court reasonably well satisfied that testimony given by a key witness was <u>false?</u>

Jeanine Weedon is the most important witness in this analysis. Mrs. Weedon is the key witness to the defense theory that she was untruthful at the trial and was able to get her lover to perjure himself as to publication.

I am not "reasonably well satisfied" that Mrs. Weedon's trial testimony was false. I am satisfied that Mrs. Weedon remains fearful of Mr. Weedon and that Mrs. Weedon has been continuously pressured by Mr. Weedon, his family, her children and others to change her testimony until she did what was necessary to get him out of jail. Mrs. Weedon's September, 1997 affidavit was provided at the request of the defense, but the affidavit did not convince Judge Lee that there was false trial testimony. Thereafter, more pressure was brought upon her.

When Mrs. Weedon testified at trial the defense was aware of, and attacked her credibility due to, her desire to rid herself of Mr. Weedon and continue her adulterous relationship with Falahee. The August, 2000 testimony on these subjects adds to the mix, but not much.

What is clear from the testimony is that the defendant is considered a man to be reckoned with. He has a reputation for violence. Mrs. Weedon testified to eight separations precipitated by abuse. Mrs. Weedon testified to threats that he would kill her. Mrs. Weedon testified to broken bones, bruises and cigarette burns.

Whether due to the love-hate relationship and/or his violence, defendant has always been successful in having his way with his wife. When he faced kidnaping charges the evidence showed he, by threats, forced her to tell the prosecutor it was all a lie.

Mrs. Weedon testified as to the last time he had beaten her. She said their five-year-old daughter saw him with a knife to her throat. This caused the present separation which has lasted through the prosecution of the trial and these post-trial proceedings. But, Mrs. Weedon has not divorced him.

On cross-examination, Mrs. Weedon had no recollection of the May, 1998 meeting with Mr. Apostolico and Detective Christian. I find this incredible. This was an important and, I am sure, stressful event. I find Detective Christian's testimony, refreshed by his notes, to be credible. Mrs. Weedon confirmed her earlier position and reported neither she nor Michael Falahee lied at the trial. Mrs. Weedon reported that the defendant was contacting her, telling her she needed to get him out. That Mrs. Weedon had no recollection of this meeting is an important factor in considering the truthfulness of her present recantation.

Finally, I note that she was told by the defense prior to her August, 2000 testimony that due to the running of the statute of limitations, the probability of being prosecuted for perjury for her recantation was remote.

I turn to Michael Falahee's supposed recantation. Falahee never was exposed to cross-examination because he died by the time of the August 28, 2000, hearing. Thus, the only evidence from Falahee is that which the trial judge viewed. Judge Lee, who, unlike me, witnessed Falahee's trial testimony, determined that Falahee's trial testimony was credible and his recantation was false. That determination remains valid. Independently, based upon my review, I, too, am not "reasonably well satisfied" that Michael Falahee's trial testimony was false.

This is a man who feared Mr. Weedon and lived in his old neighborhood where Mr. Weedon's family still lives.

At trial, Mr. Falahee testified about doing things for the defendant because of being scared of him. For example, his life was threatened if he did not have telephone conversations with Mrs. Weedon where he was told what to say by the defendant and the conversations were taped.

Mr. Falahee testified, "I lived with my mother at the time. I didn't want harm to come to them, and I just did what he wanted me to do and got away from him." Later, Mr. Falahee said, "I

mean I value my life just like everyone else." Then he said he had known him (the defendant) a long time.

Later by affidavit and videotape, he recanted and reported he lied at trial at Mrs. Weedon's request. When he signed the affidavit, James Trader was with him. James is a friend of the defendant and husband of Jo Ellen Trader.

Where does the videotape take place? In the defendant's mother's house with the aforementioned pressures.

The testimony of Jo Ellen Trader, Patricia Woodland and Sharon Carr have also been considered in the analysis. They all supported their previous positions that Mr. Weedon had not published the incident to them. They also made it clear that when Mr. Adkins spoke with them he was not suggesting that anyone give false testimony to obtain the conviction.

The different recollections of Mr. Adkins and Ms. Woodland as to their conversation are interesting. About the only thing they agree on is that she told him "to leave her the hell out of it." Why would Ms. Woodland say this if she had nothing to support the prosecutor's position? I believe Mr. Adkins' recollection is more credible. The defendant told her about the incident but she was not going to get involved; she lives in his neighborhood and is scared. Leave her the hell out it.

If a key witness gave perjured testimony might have the jury reached a different conclusion?

The testimony of Mrs. Weedon and Michael Falahee as to publication was the basis of the Supreme Court's affirmation of the Superior Court's finding the marital privilege was waived. Without the testimony of Mrs. Weedon as to the defendant's admissions and likewise Michael Falahee's testimony, the likelihood of a conviction would have been in doubt.

> That the party seeking a new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know its falsity until after the trial.

This is an interesting analysis because I must undertake it on the assumption that prong one was favorable to the defense because a person cannot be surprised by the truth.

What is important in this postconviction procedure is that the defense did not present any evidence whatsoever as to what the defense team knew, when they knew it and whether they were taken by surprise.

When the marital privilege and waiver issue came up at trial, Judge Lee decided to have a hearing outside of the presence of the jury in order to be in the best position to make the evidentiary call. He told counsel that he would be lenient in allowing them to present what they wanted as to privilege and waiver. The State offered witnesses and these witnesses were cross-examined extensively. The defense, when given the opportunity to present evidence on this limited issue, did not.

Now the defense argues that witnesses could not have been produced. The defense cites United States v. Mevers, 3d. Cir., 484 F.2d 113 (1973) ("Meyers"). In Meyers, the trial court was affirmed in permitting a new trial when defense counsel only became aware of perjured testimony during trial. The trial took place in Pennsylvania and the necessary witness was in Florida. But, in Meyers, the decision was not only based on this, but also on the fact that proof had to be ferreted out later with the assistance of the Florida State's Attorney; finally, the government did not contest the perjury. I do not believe Myers stands for the proposition that just because a witness is out of state you have no obligation to attempt to address the problem. Before Judge Lee, no request for additional time was made due to surprise to check out witnesses.

As to the August, 2000 hearing, none of the defense witnesses who testified at the hearing were subpoenaed. They were all friends of the defendant except his wife. There has been no showing that these witnesses would not have likewise come to testify for the defense had they been asked.

Somewhat puzzling is the defendant's position taken in the Rule 61 motion alleging ineffective assistance of trial counsel for not interviewing Jo Ellen Trader "prior to trial" as her testimony "was critical with regard to the issue of privilege." What information did defense lawyers have at a time when the theory of publication had not yet come up to cause them to be interviewing certain people to whom the defendant did not tell anything as opposed to everyone else in the universe the defendant did not tell? In a subsequent argument filed with the Court (docket entry 69) the defense expands the above argument to include allegations of ineffective assistance of counsel for not interviewing not only Jo Ellen Trader, but also Patricia Woodland and Michelle Falahee. In response to the State's argument that "nothing in the record shows trial counsel knew of Trader prior to trial" the defense argues that the defendant gave information to counsel about the above individuals. Nothing has ever been provided to support this allegation. Nevertheless, the mystery remains as to why the defendant would be telling his lawyer he did not say anything to the same people Mrs. Weedon included as persons to whom he published when the issue of waiver by publication did not come up until the third day of trial. The record shows that privilege literally popped up and then the trial judge hit the brakes to allow a hearing to sort it out.

PROSECUTORIAL MISCONDUCT

The affidavits of several of the witnesses raised an inference of prosecutorial misconduct by Mr. Adkins. The Supreme Court noted this inference and mentioned that it could be addressed in the evidentiary hearing. It was addressed by the witnesses who produced the affidavits as well as Mr. Adkins. These witnesses acknowledged that there was no attempt to get them to be untruthful in order to convict the defendant. Even though the defense reported at the hearing that prosecutorial misconduct was not being alleged and was not an issue, it was the wording of the affidavits produced by the defense that cast the shadow upon Mr. Adkins. I am satisfied that Mr. Adkins' communications with these witnesses were appropriate and upright.

CONCLUSION

I have gone through this file methodically as I was not the trial judge. With the benefit of this review and the evidentiary hearing, I am satisfied that, although I reach the same conclusions, I have made decisions in this matter independent of the trial judge's conclusions. Necessarily, it was a fact- intensive review. Based on this review, I conclude there was no perjury at trial which tarnished the search for truth and impacted the trial.

Defendant's motion for postconviction relief based upon recantation is denied.

IT IS SO ORDERED.