

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

<b>STATE OF DELAWARE</b>	)	
	)	
v.	)	ID No. 0107022700
	)	Cr. A. No.
<b>MANUEL NIEVES,</b>	)	IN01-08-1206R1-1210R1,
Defendant.	)	IN01-08-1215R1-1219R1,
	)	IN01-08-1224R1-1234R1,
	)	IN01-08-1236R1-1244R1,
	)	IN01-08-2990R1-2991R1

**ORDER**

This 16<sup>th</sup> day of August, 2004, upon consideration of Defendant's Motion For Post Conviction Relief pursuant to Superior Court Rule 61, it appears to the Court that:

1. In March 2002, a Superior Court jury convicted Defendant Manuel Nieves, a.k.a. Manuel Nieves Alicea, of 20 counts of First Degree Rape, one count of Second Degree Rape, 10 counts of Second Degree Unlawful Sexual Contact, and one count of Continuing Sexual Abuse Of A Child.<sup>1</sup> This Court sentenced Nieves to 322 years imprisonment, practically all of which

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<sup>1</sup> Defendant was acquitted on 8 other counts of First Degree Rape, and the State entered a *nolle prosequi* on one other count of Rape Second.

were mandatory minimum sentences. The Supreme Court affirmed this sentence on appeal.

2. Nieves now brings this Rule 61 Motion For Post Conviction Relief. While the motion meanders through dozens of allegations, the main claims are for ineffective assistance of counsel and plain error by this Court in seating a certain juror. These arguments reflect a misunderstanding of the law and warrant summary denial.

3. Nieves' ineffective assistance of counsel claim is not really based upon his counsel's actions, but rather the manner in which the State proved its case, about which Nieves' attorney could do little. The charges stemmed from dozens of sex acts that Nieves forced upon an eight-year-old child. After one of these acts the victim apparently became ill, prompting her mother to take her to the hospital. The victim informed the resident nurse of the abuse and the nurse informed police. The victim was then interviewed by a trained forensic interrogator at the Child Advocacy Center. The victim told the forensic investigator that Nieves had forced fellatio, cunnilingus, and vaginal sex upon her numerous times. At trial, the State's primary evidence was the victim's testimony, which was substantially identical to the story she told in her prior interview. Nieves also testified in his own

defense. The jury believed the victim despite the fact that there was no medical indication that the child had been assaulted.

Nieves' argument, though somewhat difficult to discern, seems to be that, because there was no medical evidence of the rapes, the victim must have been lying. Therefore, the victim should not have been allowed to testify nor should her testimony have been credited by the jury. Nieves faults his attorney for not finding a way to prevent the victim from testifying. This is not ineffective assistance of counsel; Delaware law provides no basis for Nieves' attorney to have kept the victim from presenting evidence in support of the charges. The fact that there was not corroborating circumstantial medical evidence was highlighted by counsel during cross-examination and the defense's case in chief, and, indeed, constituted Nieves' entire defense. Defendant's other allegations involving ineffective assistance of counsel are similarly insubstantial.<sup>2</sup>

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<sup>2</sup> Defendant alleges that his attorney did not fully investigate his case, did not properly communicate with him, and did not give him copies of all the evidence, including *Brady* material. I find no evidence to support these claims. Indeed, it seems that Nieves' attorney took commendable care to investigate other possible suspects and witnesses, but that there was simply nothing to be found that was substantial enough to overcome the eight-year-old victim's devastating open court identification of Nieves as the man who had repeatedly raped her. Far from failing to communicate or withholding evidence, Nieves' counsel met with Defendant numerous times to discuss the victim's statements and plan accordingly. Indeed, the State, even though not required to do so, gave Nieves' attorney a video tape of the victim's first interview four days before jury selection, and the attorney met with Nieves and discussed the tape at great length. In short, Nieves' complaint is groundless.

4. Nieves also seems to be making a claim that the evidence of his guilt was insufficient as a matter of law. Lack of corroborating medical evidence does not give rise to a claim for insufficient evidence. In this and every other American jurisdiction, the testimony of one witness, if believed by a jury to establish all of the elements of a charge beyond a reasonable doubt, is sufficient to convict for almost any crime, including those at issue here.<sup>3</sup> Moreover, this claim was raised and rejected at trial and was not appealed, waiving it forever.

5. Finally, Nieves seems to complain that it was plain error for this Court to have sat juror number seven, and also that it was ineffective assistance of counsel for his lawyer not to have stopped this Court from doing so. That juror stated during *voir dire* that his niece had been sexually assaulted but that he could be fair and impartial in judging this case. Nothing in the questioning by either the State or the defense indicated otherwise, and the defense had already exhausted its preemptory challenges. This issue was available for appeal, at which time Nieves had a different lawyer, but

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<sup>3</sup> *Marvel v. State*, 131 A. 317 (Del. 1925) (“Finally it may be pointed out that in all criminal trials in this State the same situation of ‘oath against oath’ may exist and the testimony of a single witness is sufficient to sustain a conviction, the weight and credibility of the testimony being questions for the jury to determine.”); 29 Am. Jur. 2d Evidence § 1480 (“Absent physical impossibility or inherent improbability, the testimony of a single eyewitness, if it is positive and credible and believed by the jury beyond a reasonable doubt, is sufficient to establish identity and support a criminal conviction even if it is contradicted by the accused or alibi testimony.”)

Defendant did not pursue it even though his former counsel specifically pointed it out. Nieves does not offer any basis for this Court to make a plain error finding.

7. For the foregoing reasons, Defendant's Motion For Post Conviction Relief is hereby **DENIED**.

**IT IS SO ORDERED.**

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Peggy L. Ableman, Judge

Original to Prothonotary – Criminal  
cc: Manuel Nieves