SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

May 3, 2005

N440
Graylin Hall
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: Defendant ID No. 0001001994

Dear Mr. Hall:

On November 19, 2004, you filed a Motion for Postconviction Relief pursuant to Rule 61. You alleged your trial attorney was ineffective. The Court expanded the record pursuant to Rule 61(g). The Court has received affidavits from trial counsel and you. This is my decision denying your Motion.

HISTORY

Following a jury trial you were convicted of second degree assault, burglary and possession of burglars' tools. The jury found you not guilty of first degree robbery. Because of your prior record, you received a mandatory life sentence as an habitual offender under 11 Del. C. §4217(b). Your conviction was affirmed by the Delaware Supreme Court.[1]

At the time of the aforementioned crimes, you were employed by a maintenance company that worked in the victim's condominium complex. You had access to the units and had done repairs in the victim's home.

The victim went to the post office. When she returned to her residence, she decided to take a nap. She went into her bathroom to change her clothes. Upon sitting on the toilet, an African-American man jumped from behind the shower curtain and placed a hand over her face. The victim bit the intruder's thumb twice and the man fled. Based upon the evidence presented at trial, direct and circumstantial, you were convicted of the aforementioned offenses. A full review of the evidence is not necessary for a decision on this Motion.

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[1] *Hall v. State*, 788 A.2d 118, 129 (Del. 2001).

PROCEDURAL BARS

There are no procedural bars as the Motion was filed within three years from the Supreme Court's decision affirming the conviction. The grounds all involve charges of ineffective assistance of counsel.

STRICKLAND

To establish a claim of ineffective assistance of counsel, the Defendant must establish that his attorney made errors, based upon a reasonably objective standard, in the preparation for his trial and/or in the trial itself. The Defendant must also prove that the errors committed by his attorney actually prejudiced him. Simply put, the Defendant must prove that the mistakes of his attorney impacted on the verdict.[2]

The Defendant includes all of his allegations under a "ground one". I've attempted to break out the individual claims and address each.

THE KEY

The State presented evidence that the Defendant had possession of a key ring that contained the master key to the units in the victim's condominium complex.

Prior to opening statements, the prosecutor sought a ruling under DRE 404(b) as to testimony that the Defendant had used a master key to gain entrance into another unit, without permission, approximately two weeks prior to the events leading to Mr. Hall's conviction. After hearing proffers, the Court deferred a decision but directed the State to stay away from mentioning it in their opening statement.

The Defendant claims his attorney then "blundered" in his opening statement by mentioning the "key".

Trial counsel's opening emphasized that the State's case came down to "a coat, a cut, and a key". Trial counsel did not blunder or err when staking out this position. Trial counsel knew the State could connect the Defendant with the master key on the day of the crime. That was not the issue of the DRE 404(b) Motion. The issue was whether he had it and used it improperly two weeks earlier. The Defendant's present attack is factually wrong.

I find defense counsel did not commit a *Strickland* error when he mentioned a "key" in his opening.

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[2] *Strickland v. Washington*, 466 U. S. 668 (1984).

Nor can Defendant show any prejudice because ultimately the Court permitted the introduction of the incident two weeks earlier after conducting a DRE 404(b) and *Getz*[3] analysis.

This claim is denied.

THE OBJECTIONS

The Defendant alleges his attorney was too inexperienced to have been involved in a felony trial. He alleges that the numerous objections made during the trial reflected poorly upon his attorney in the eyes of the jury.

This was a hard-fought case with numerous objections by both the State and the defense. The vast majority of the Court's ruling took place at the sidebar. The numerous objections and the Court's rulings do not form any basis of a claim of ineffective assistance of counsel. The Defendant's claims are conclusory. I also note that prior to opening statements, the Court included the following remarks to the jury:

> Now, during the course of this trial, if it's like most trials I have, I expect the lawyers to make objections. You must also understand the lawyers' role here. The lawyers are trained trial counsel. They are expected by me and are duty bound in their oath as lawyers to make objections when the lawyers think that the question asked does not fit our rules of evidence or calls for an answer that does not fit our rules of evidence. When we play football, Monopoly or canasta, there are rules. Likewise, there are rules of evidence that are applicable in the Court. You don't have to worry about those, though, because they fall into my bailiwick.
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> Rulings on objections fall into the judge's bailiwick as they are questions of law. These attorneys are aware that when they make an objection, I want them to come to sidebar and argue their case. I'll make my ruling. In other words, no speaking objections. The purpose of that is two-fold. Number one, it helps me to be able to ask questions that I can probe before I make my ruling, and it also helps you. Because if I say objection sustained and you have heard five minutes' worth of theory and proffers, and I say, oh, forget about that, it's sometimes hard. It's sometimes hard. There may be times during the trial that I have to say, ladies and gentlemen, I'm going to strike that, you're not to consider that, you're not to use that in deliberations. That's the Court's limiting instruction and you must follow that. But I try to make it easier on you by doing these things at the sidebar.
>
> Now, there may be occasions that I announce my ruling, but more than likely my experience is when I say a word up here after I've made my rulings, most of you have been able to figure out which way I've ruled. If they go back and ask the same question, you're going to say, well, the judge overruled the objection. If they go back and go to the same area, you'll probably infer, well, maybe the judge sustained that.

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[3] *Getz v. State*, 538 A.2d 726, 734 (Del. 1988).

It doesn't make any difference what I rule as far as your responsibility. Again, that's important.

By my rulings, my body language, my demeanor, I will not attempt to telegraph to you, the jury, anything concerning how you decide this case. Twelve of you will decide the case as judges of the fact. Twelve of you will not be jurors. I don't like the name jurors. I like the name judges, because you actually decide the facts, apply the law as the Court instructs you at the end of the case, and in this way decide the case.

So again, don't take anything from my rulings. I make my rulings on objections like the neutral umpire. I call balls and strikes. I don't care what the count is. I don't care what the score is.

Taking into consideration all of the above, I find that the Defendant has not established that his attorney's trial performance was deficient as to objections made by his attorney and those made by the prosecutor. Nor has the Defendant shown any prejudice.

This claim is denied.

11 DEL.C.§3507

Embodied in this claim is a complaint that counsel declined to re-cross examine a witness following the introduction of an 11 Del. C. §3507 statement of the witness. The Defendant implies that when the Court asked counsel if he had any further questions (re-cross) that the Court was suggesting to counsel that he should re-cross examine the witness. That is incorrect. The Court's question was to assure compliance with the opportunity to cross-examine the witness as to the 11 Del. C. §3507 statement. The Court agrees with counsel that it is just as important to know when not to ask a question. Re-cross examination would have probably only reinforced the State's purposes for calling the witness. I note Defendant offers nothing for how a re-cross examination would have benefitted the defense. I do not find error, nor do I find prejudice.

This claim is denied.

THE MENTALLY CHALLENGED WITNESS

A co-worker of the Defendant was a witness for the State. He was slow in answering some of the questions and did not have a good recall of many details. Some of his testimony was inconsistent and some of his in-court testimony was not consistent with his 11 Del. C. §3507 statement.

Trial counsel effectively cross-examined this witness to establish the witness' poor recollection.

Additionally, trial counsel objected to the use of the 11 Del. C. §3507 statement complaining that in reality, due to the witness' poor recollection, the defense had no real ability to cross-examine the witness. The Court denied this application and the Supreme Court affirmed this ruling. In its decision, the Supreme Court noted that "The normal remedy for testimony that is 'marred by forgetfulness, confusion, or evasion' is impeachment."[4]

The Defendant argues that the Supreme Court was implying that the proper means of going after this witness was impeachment which his attorney failed to do. The Supreme Court's comments on what can be effective impeachment through cross-examination were just examples of what may be done. I'm satisfied that counsel was effective in his examination of the witness in light of the witness' obvious difficulties in remembering events. I am satisfied that the witness's deficiencies were fairly presented to the jury. Sometimes you just don't need a sledgehammer. I do not find trial counsel to have committed error in the cross-examination of this witness. I do not find that the Defendant has established any prejudice. Again, the sledgehammer approach is not always necessary and can backfire.

This claim is dismissed.

FAILURE TO CALL WITNESSES

The Defendant claims that his attorney was ineffective because he should have subpoenaed witnesses to support the Defendant's position that he was on a roof doing work. Trial counsel has detailed in his affidavit his extraordinary efforts to locate and communicate with these potential witnesses. Trial counsel, after talking with the witnesses, determined they wouldn't be viable alibi witnesses. Trial counsel was not ineffective as to these allegations. Nor has Defendant offered a proffer as to any specific witness who would have provided alibi testimony so he can't establish prejudice.

This claim fails.

In summary, upon examination of all of Mr. Hall's claims, I find that none have merit.

Defendant's Motion for Rule 61 relief is denied.

Yours very truly,

T. Henley Graves

THG:baj
cc: Prothonotary

[4] *Hall v. State*, 788 A.2d 118, 124 (Del. 2001).